

AMENDED IN ASSEMBLY APRIL 16, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2481

Introduced by Assembly Member Frommer

February 21, 2002

~~An act to amend Section 25281 of the Health and Safety Code, relating to underground storage tanks. An act to amend Section 7058.7 of the Business and Professions Code, to amend Section 2929.5 of the Civil Code, to amend Sections 564, 726.5, and 736 of the Code of Civil Procedure, to amend Sections 25150.1, 25187, 25262, 25281, 25281.5, 25284, 25288, 25297.1, 25299, 25299.7, 25299.36, 25299.39.2, 25299.39.3, 25299.50.1, 25299.51, 25299.53, 25299.54, 25299.55, 25299.57, 25299.58, 25299.70, 25404, 25514.5, and 33459 of, to add Sections 25296.10, 25296.15, 25296.20, 25296.25, 25296.30, 25296.35, 25296.40, 25299.8, 25299.38, 25404.1.1, and 25404.1.2 to, to repeal Sections 25299.37, 25299.37.1, 25299.37.2, 25299.38.1, 25299.39, 25299.39.1, and 25514.6 of, and to repeal and add Section 25292.3 of, the Health and Safety Code, and to amend Sections 13285, 13323, 13365, and 13391.5 of the Water Code, relating to the environment.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2481, as amended, Frommer. Underground storage tanks: unified program agencies: Porter-Cologne Water Quality Control Act: administrative civil penalties: enforcement.

Existing

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground

storage tanks that are used to store hazardous substances and that are installed after January 1, 1984, to meet certain requirements, including that the primary containment be product tight and that the tank's secondary containment meet specified standards. These requirements are required to be implemented by the local agency. ~~Existing~~ *Under existing law, with specified exceptions, no person may own or operate an underground storage tank containing hazardous substances unless a permit for its operation has been issued. Existing law requires a permit issued for a petroleum underground storage tank system that meets specified requirements to include an upgrade compliance certificate and no person may deposit petroleum into an underground storage tank system unless the underground storage tank system meets those described requirements. A person depositing petroleum into an underground storage tank system is required to verify that the system meets those requirements by taking certain actions, including viewing the upgrade compliance certificate.*

Existing law defines the term “product tight”, tight,” for purposes of those requirements, as being impervious to the substance that is contained, so as to prevent the seepage of the substance from the primary containment and specifies that to be product tight, the tank not be subject to physical or chemical deterioration by the substance which it contains over the useful life of the tank.

Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, owners and operators of petroleum underground storage tanks are required to take corrective action to an unauthorized release of petroleum, including requirements for the preparation of a work plan. The act provides for the issuance of a specified closure letter relative to the completion of an investigation and corrective action for a petroleum underground storage tank. The board is authorized to suspend corrective action at a site, except for emergency sites.

This bill would revise and recast the provisions regulating the storage of hazardous substances in underground storage tanks and would make conforming changes in that regard. The bill would revise the definition of “product tight” to specify that it means being impervious to the liquid and vapor of the substance, so as to prevent seepage from the containment. The bill would delete the requirement that the tank not be subject to physical or chemical deterioration over the useful life of the tank. The bill would also define the term “compatible” for purpose of that act.



The bill would delete the provisions requiring an upgraded certificate of compliance and would instead authorize a local agency, upon the discovery of a significant violation of any requirement, to affix a red tag, in plain view, to the fill pipe of the noncompliant underground storage tank system. The bill would prohibit any person from depositing petroleum into, and would prohibit the owner or operator of a facility from depositing or allowing the deposit of petroleum into, an underground storage tank system that has a red tag affixed to its fill pipe.

The bill would expand the corrective action requirements and related provisions for petroleum underground storage tanks to apply those requirements to all underground storage tanks and would make conforming changes. The bill would impose a civil penalty upon any person who violates a corrective action requirement.

The bill would prohibit a person who purchases or acquires real property on which an underground tank is located from being reimbursed for a claim, except under specified conditions.

Since the bill would impose new requirements upon local agencies with regard to the regulation of underground storage tanks, the bill would impose a state-mandated local program.

(2) Existing law authorizes the executive officer of a regional board to issue a complaint for an administrative civil penalty under the Porter-Cologne Water Quality Control Act.

This bill would revise the procedures for the service of a complaint for that penalty and the conduct of a hearing by the state board.

(3) Existing law requires the Secretary for Environmental Protection to adopt regulations and implement a unified hazardous waste and hazardous materials management regulatory program. A city or local agency that meets specified requirements is authorized to apply to the secretary to implement the unified program, and every county is required to apply to the secretary to be certified to implement the unified program.

This bill would define the term “minor violation,” for purposes of the unified program, as the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the Unified Program Agency (UPA) is authorized to implement or enforce pursuant to the program, excluding certain types of violations.



This bill would authorize a unified program agency, if it determines that a person has committed, or is committing, a violation of any requirement that the UPA is authorized to enforce or implement pursuant to the unified program, to issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty. The bill would specify procedures for the conduct of a hearing, upon the request of a person served with an order, pursuant to one of 2 specified hearing processes, except under certain conditions. The bill would require, if the unified program agency conducts the hearing, that a decision be issued by the unified program agency within 60 days after the hearing is conducted by the unified program agency. The bill would provide that an order issued by the unified program agency setting a penalty pursuant to the hearing by the unified program agency is final upon issuance.

This bill would require all administrative penalties collected from actions brought by a UPA to be paid to the UPA that imposed the penalty, and to deposit the penalties into a special account that would be required to be expended to fund the activities of the UPA in enforcing the unified program.

This bill would require an authorized representative of the UPA, who, in the course of conducting an inspection, detects a minor violation, to issue a notice to comply detailing the violation, thereby imposing a state-mandated local program by imposing new duties upon local agencies. The bill would require a person who receives a notice to comply to take specified actions within 30 days from the date of the notice and would provide that a false certification that a violation has been corrected is punishable as a misdemeanor, thereby imposing a state-mandated local program by creating a new crime. The bill would provide that a notice to comply is the only means by which a UPA may cite a minor violation.

(4) Existing law requires businesses that handle hazardous materials to prepare a business plan and submit an annual inventory form to the administering agency. Existing law specifies procedures for the imposition of a civil and administrative penalties for a violation of those provisions and requires the civil penalties collected to be apportioned in a specified manner, including \$200 for deposit in the Hazardous Materials Enforcement and Training Account, 75% to the administering agency, to reimburse specified local agencies for expenses, and 25% to the principal agency that assisted the administering agency.



This bill would require the issuance of an enforcement order or the imposition of an administrative penalty by an administering agency to instead be conducted using the procedures established by the bill. The bill would also repeal those provisions requiring the apportionment of the civil penalty.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 7058.7 of the Business and Professions*
2 *Code is amended to read:*

3 7058.7. (a) No contractor ~~shall~~ *may* engage in a removal or
4 remedial action, as defined in subdivision (d), unless the qualifier
5 for the license has passed an approved hazardous substance
6 certification examination.

7 (b) (1) The Contractors' State License Board, the Division of
8 Occupational Safety and Health of the Department of Industrial
9 Relations, and the Department of Toxic Substances Control shall
10 jointly select an advisory committee, which shall be composed of
11 two representatives of hazardous substance removal workers in
12 California, two general engineering contractors in California, and
13 two representatives of insurance companies in California who
14 shall be selected by the Insurance Commissioner.

15 (2) The Contractors' State License Board shall develop a
16 written test for the certification of contractors engaged in
17 hazardous substance removal or remedial action, in consultation
18 with the Division of Occupational Safety and Health, the State
19 Water Resources Control Board, the Department of Toxic
20 Substances Control, and the advisory committee.

21 (c) The Contractors' State License Board may require
22 additional updated approved hazardous substance certification
23 examinations of licensees currently certified based on new public
24 or occupational health and safety information. The Contractors'

1 State License Board, in consultation with the Department of Toxic
2 Substances Control and the State Water Resources Control Board,
3 shall approve other initial and updated hazardous substance
4 certification examinations and determine whether to require an
5 updated certification examination of all current certificate holders.

6 (d) For purposes of this section “removal or remedial action”
7 has the same meaning as found in Chapter 6.8 (commencing with
8 Section 25300) of Division 20 of the Health and Safety Code, if
9 the action requires the contractor to dig into the surface of the earth
10 and remove the dug material and the action is at a site listed
11 pursuant to Section 25356 of the Health and Safety Code or any
12 other site listed as a hazardous ~~waste~~ *substance release* site by the
13 Department of Toxic Substances Control or a site listed on the
14 National Priorities List compiled pursuant to the Comprehensive
15 Environmental Response, Compensation, and Liability Act of
16 1980 (42 U.S.C. Sec. 9601 et seq.). “Removal or remedial action”
17 does not include asbestos-related work, as defined in Section
18 6501.8 of the Labor Code, or work related to a hazardous
19 substance spill on a highway.

20 (e) (1) A contractor ~~shall~~ *may* not install or remove an
21 underground storage tank, unless the contractor has passed the
22 hazardous substance certification examination developed
23 pursuant to this section.

24 (2) A contractor who is not certified may bid on or contract for
25 the installation or removal of an underground tank, ~~as long as if~~
26 work is performed by a contractor who is certified pursuant to this
27 section.

28 (3) For purposes of this subdivision, “underground storage
29 tank” has the same meaning as defined in subdivision ~~(x)~~ (y) of
30 Section 25281 of the Health and Safety Code.

31 *SEC. 2. Section 2929.5 of the Civil Code is amended to read:*

32 2929.5. (a) A secured lender may enter and inspect the real
33 property security for the purpose of determining the existence,
34 location, nature, and magnitude of any past or present release or
35 threatened release of any hazardous substance into, onto, beneath,
36 or from the real property security on either of the following:

37 (1) Upon reasonable belief of the existence of a past or present
38 release or threatened release of any hazardous substance into, onto,
39 beneath, or from the real property security not previously
40 disclosed in writing to the secured lender in conjunction with the

1 making, renewal, or modification of a loan, extension of credit,
2 guaranty, or other obligation involving the borrower.

3 (2) After the commencement of nonjudicial or judicial
4 foreclosure proceedings against the real property security.

5 (b) The secured lender shall not abuse the right of entry and
6 inspection or use it to harass the borrower or tenant of the property.
7 Except in case of an emergency, when the borrower or tenant of the
8 property has abandoned the premises, or if it is impracticable to do
9 so, the secured lender shall give the borrower or tenant of the
10 property reasonable notice of the secured lender's intent to enter,
11 and enter only during the borrower's or tenant's normal business
12 hours. Twenty-four hours' notice shall be presumed to be
13 reasonable notice in the absence of evidence to the contrary.

14 (c) The secured lender shall reimburse the borrower for the cost
15 of repair of any physical injury to the real property security caused
16 by the entry and inspection.

17 (d) If a secured lender is refused the right of entry and
18 inspection by the borrower or tenant of the property, or is
19 otherwise unable to enter and inspect the property without a breach
20 of the peace, the secured lender may, upon petition, obtain an order
21 from a court of competent jurisdiction to exercise the secured
22 lender's rights under subdivision (a), and that action shall not
23 constitute an action within the meaning of subdivision (a) of
24 Section 726 of the Code of Civil Procedure.

25 (e) For purposes of this section:

26 (1) "Borrower" means the trustor under a deed of trust, or a
27 mortgagor under a mortgage, where the deed of trust or mortgage
28 encumbers real property security and secures the performance of
29 the trustor or mortgagor under a loan, extension of credit,
30 guaranty, or other obligation. The term includes any
31 successor-in-interest of the trustor or mortgagor to the real
32 property security before the deed of trust or mortgage has been
33 discharged, reconveyed, or foreclosed upon.

34 (2) "Hazardous substance" ~~means (A) any~~ *includes all of the*
35 *following:*

36 (A) Any "hazardous substance" as defined in subdivision (f)
37 (h) of Section 25281 of the Health and Safety Code as effective on
38 ~~January 1, 1991, or as subsequently amended, (B) any.~~

1 (B) Any “waste” as defined in subdivision (d) of Section 13050
2 of the Water Code as ~~effective on January 1, 1991, or as~~
3 ~~subsequently amended, or (C) petroleum.~~

4 (C) *Petroleum*, including crude oil or any fraction thereof,
5 natural gas, natural gas liquids, liquefied natural gas, or synthetic
6 gas usable for fuel, or any mixture thereof.

7 (3) “Real property security” means any real property and
8 improvements, other than a separate interest and any related
9 interest in the common area of a residential common interest
10 development, as the terms “separate interest,” “common area,”
11 and “common interest development” are defined in Section 1351,
12 or real property consisting of one acre or less which contains 1 to
13 15 dwelling units.

14 (4) “Release” means any spilling, leaking, pumping, pouring,
15 emitting, emptying, discharging, injecting, escaping, leaching,
16 dumping, or disposing into the environment, including continuing
17 migration, of hazardous substances into, onto, or through soil,
18 surface water, or groundwater.

19 (5) “Secured lender” means the beneficiary under a deed of
20 trust against the real property security, or the mortgagee under a
21 mortgage against the real property security, and any
22 successor-in-interest of the beneficiary or mortgagee to the deed
23 of trust or mortgage.

24 *SEC. 3. Section 564 of the Code of Civil Procedure is amended*
25 *to read:*

26 564. (a) A receiver may be appointed, in the manner
27 provided in this chapter, by the court in which an action or
28 proceeding is pending in any case in which the court is empowered
29 by law to appoint a receiver.

30 (b) A receiver may be appointed by the court in which an action
31 or proceeding is pending, or by a judge thereof, in the following
32 cases:

33 (1) In an action by a vendor to vacate a fraudulent purchase of
34 property, or by a creditor to subject any property or fund to the
35 creditor’s claim, or between partners or others jointly owning or
36 interested in any property or fund, on the application of the
37 plaintiff, or of any party whose right to or interest in the property
38 or fund, or the proceeds thereof, is probable, and where it is shown
39 that the property or fund is in danger of being lost, removed, or
40 materially injured.

1 (2) In an action by a secured lender for the foreclosure of a deed
2 of trust or mortgage and sale of property upon which there is a lien
3 under a deed of trust or mortgage, where it appears that the
4 property is in danger of being lost, removed, or materially injured,
5 or that the condition of the deed of trust or mortgage has not been
6 performed, and that the property is probably insufficient to
7 discharge the deed of trust or mortgage debt.

8 (3) After judgment, to carry the judgment into effect.

9 (4) After judgment, to dispose of the property according to the
10 judgment, or to preserve it during the pendency of an appeal, or
11 pursuant to *the Enforcement of Judgments Law* (Title 9
12 (commencing with Section 680.010)) ~~—(enforcement of~~
13 ~~judgments)~~, or after sale of real property pursuant to a decree of
14 foreclosure, during the redemption period, to collect, expend, and
15 disburse rents as directed by the court or otherwise provided by
16 law.

17 (5) Where a corporation has been dissolved, as provided in
18 Section 565.

19 (6) Where a corporation is insolvent, or in imminent danger of
20 insolvency, or has forfeited its corporate rights.

21 (7) In an action of unlawful detainer.

22 (8) At the request of the Public Utilities Commission pursuant
23 to ~~Sections~~ Section 855 and or 5259.5 of the Public Utilities Code.

24 (9) In all other cases where necessary to preserve the property
25 or rights of any party.

26 (10) At the request of the Office of Statewide Health Planning
27 and Development, or the Attorney General, pursuant to Section
28 129173 of the Health and Safety Code.

29 (11) In an action by a secured lender for specific performance
30 of an assignment of rents provision in a deed of trust, mortgage,
31 or separate assignment document. The appointment may be
32 continued after entry of a judgment for specific performance if
33 appropriate to protect, operate, or maintain real property
34 encumbered by a deed of trust or mortgage or to collect rents
35 therefrom while a pending nonjudicial foreclosure under power of
36 sale in a deed of trust or mortgage is being completed.

37 (12) In a case brought by an assignee under an assignment of
38 leases, rents, issues, or profits pursuant to subdivision (g) of
39 Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means ~~(A) any~~ *any of the following*:

~~(A) Any "hazardous substance" as defined in subdivision (f) (h) of Section 25281 of the Health and Safety Code as effective on January 1, 1991, or as subsequently amended, (B) any.~~

~~(B) Any "waste" as defined in subdivision (d) of Section 13050 of the Water Code as effective on January 1, 1991, or as subsequently amended, or (C) petroleum.~~

(C) *Petroleum* including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) “Real property security” means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms “separate interest,” “common area,” and “common interest development” are defined in Section 1351 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) “Secured lender” means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 4. Section 726.5 of the Code of Civil Procedure is amended to read:

726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision of law, except subdivision (d) of this section, a secured lender may elect between the following where the real property security is environmentally impaired and the borrower’s obligations to the secured lender are in default:

(1) (A) Waiver of its lien against (i) any parcel of real property security that is environmentally impaired or is an affected parcel, and (ii) all or any portion of the fixtures and personal property attached to the parcels; and

(B) Exercise of (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law.

(2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security, and (ii) any other rights and remedies permitted by law.

(b) Before the secured lender may waive its lien against any parcel of real property security pursuant to paragraph (1) of

1 subdivision (a) on the basis of the environmental impairment
2 contemplated by paragraph (3) of subdivision (e), (i) the secured
3 lender shall provide written notice of the default to the borrower,
4 and (ii) the value of the subject real property security shall be
5 established and its environmentally impaired status shall be
6 confirmed by an order of a court of competent jurisdiction in an
7 action brought by the secured lender against the borrower. The
8 complaint for a valuation and confirmation action may include
9 causes of action for a money judgment for all or part of the secured
10 obligation, in which case the waiver of the secured lender's liens
11 under paragraph (1) of subdivision (a) shall result only if and when
12 a final money judgment is obtained against the borrower.

13 (c) If a secured lender elects the rights and remedies permitted
14 by paragraph (1) of subdivision (a) and the borrower's obligations
15 are also secured by other real property security, fixtures, or
16 personal property, the secured lender shall first foreclose against
17 the additional collateral to the extent required by applicable law in
18 which case the amount of the judgment of the secured lender
19 pursuant to paragraph (1) of subdivision (a) shall be limited to the
20 extent Section 580a or 580d, or subdivision (b) of Section 726
21 apply to the foreclosures of additional real property security. The
22 borrower may waive or modify the foreclosure requirements of
23 this subdivision provided that the waiver or modification is in
24 writing and signed by the borrower after default.

25 (d) Subdivision (a) shall be inapplicable if all of the following
26 are true:

27 (1) The release or threatened release was not knowingly or
28 negligently caused or contributed to, or knowingly or willfully
29 permitted or acquiesced to, by any of the following:

30 (A) The borrower or any related party.

31 (B) Any affiliate or agent of the borrower or any related party.

32 (2) In conjunction with the making, renewal, or modification
33 of the loan, extension of credit, guaranty, or other obligation
34 secured by the real property security, neither the borrower, any
35 related party, nor any affiliate or agent of either the borrower or
36 any related party had actual knowledge or notice of the release or
37 threatened release, or if such a person had knowledge or notice of
38 the release or threatened release, the borrower made written
39 disclosure thereof to the secured lender after the secured lender's
40 written request for information concerning the environmental

1 condition of the real property security, or the secured lender
2 otherwise obtained actual knowledge thereof, prior to the making,
3 renewal, or modification of the obligation.

4 (e) For purposes of this section:

5 (1) “Affected parcel” means any portion of a parcel of real
6 property security that is (A) contiguous to the environmentally
7 impaired parcel, even if separated by roads, streets, utility
8 easements, or railroad rights-of-way, (B) part of an approved or
9 proposed subdivision within the meaning of Section 66424 of the
10 Government Code, of which the environmentally impaired parcel
11 is also a part, or (C) within 2,000 feet of the environmentally
12 impaired parcel.

13 (2) “Borrower” means the trustor under a deed of trust, or a
14 mortgagor under a mortgage, where the deed of trust or mortgage
15 encumbers real property security and secures the performance of
16 the trustor or mortgagor under a loan, extension of credit,
17 guaranty, or other obligation. The term includes any
18 successor-in-interest of the trustor or mortgagor to the real
19 property security before the deed of trust or mortgage has been
20 discharged, reconveyed, or foreclosed upon.

21 (3) “Environmentally impaired” means that the estimated
22 costs to clean up and remediate a past or present release or
23 threatened release of any hazardous substance into, onto, beneath,
24 or from the real property security, not disclosed in writing to, or
25 otherwise actually known by, the secured lender prior to the
26 making of the loan or extension of credit secured by the real
27 property security, exceeds 25 percent of the higher of the aggregate
28 fair market value of all security for the loan or extension of credit
29 (A) at the time of the making of the loan or extension of credit, or
30 (B) at the time of the discovery of the release or threatened release
31 by the secured lender. For the purposes of this definition, the
32 estimated cost to clean up and remediate the contamination caused
33 by the release or threatened release shall include only those costs
34 that would be incurred reasonably and in good faith, and fair
35 market value shall be determined without giving consideration to
36 the release or threatened release, and shall be exclusive of the
37 amount of all liens and encumbrances against the security that are
38 senior in priority to the lien of the secured lender. Notwithstanding
39 the foregoing, the real property security for any loan or extension
40 of credit secured by a single parcel of real property which is

1 included in the National Priorities List pursuant to Section 9605
2 of Title 42 of the United States Code, or in any list published by
3 the ~~State Department of Health Services~~ *Toxic Substances Control*
4 pursuant to subdivision (b) of Section 25356 of the Health and
5 Safety Code, shall be deemed to be environmentally impaired.

6 (4) “Hazardous substance” means ~~(A) any~~ *any of the*
7 *following*:

8 (A) Any “hazardous substance” as defined in subdivision ~~(f)~~
9 ~~(h)~~ of Section 25281 of the Health and Safety Code ~~as effective on~~
10 ~~January 1, 1991, or as subsequently amended, (B) any.~~

11 (B) Any “waste” as defined in subdivision (d) of Section 13050
12 of the Water Code ~~as effective on January 1, 1991, or as~~
13 ~~subsequently amended, or (C) petroleum.~~

14 (C) *Petroleum*, including crude oil or any fraction thereof,
15 natural gas, natural gas liquids, liquefied natural gas, or synthetic
16 gas usable for fuel, or any mixture thereof.

17 (5) “Real property security” means any real property and
18 improvements, other than a separate interest and any related
19 interest in the common area of a residential common interest
20 development, as the terms “separate interest,” “common area,”
21 and “common interest development” are defined in Section 1351
22 of the Civil Code, or real property which contains only 1 to 15
23 dwelling units, which in either case (A) is solely used (i) for
24 residential purposes, or (ii) if reasonably contemplated by the
25 parties to the deed of trust or mortgage, for residential purposes as
26 well as limited agricultural or commercial purposes incidental
27 thereto, and (B) is the subject of an issued certificate of occupancy
28 unless the dwelling is to be owned and occupied by the borrower.

29 (6) “Related party” means any person who shares an
30 ownership interest with the borrower in the real property security,
31 or is a partner or joint venturer with the borrower in a partnership
32 or joint venture, the business of which includes the acquisition,
33 development, use, lease, or sale of the real property security.

34 (7) “Release” means any spilling, leaking, pumping, pouring,
35 emitting, emptying, discharging, injecting, escaping, leaching,
36 dumping, or disposing into the environment, including continuing
37 migration, of hazardous substances into, onto, or through soil,
38 surface water, or groundwater. The term does not include actions
39 directly relating to the incorporation in a lawful manner of

1 building materials into a permanent improvement to the real
2 property security.

3 (8) “Secured lender” means the beneficiary under a deed of
4 trust against the real property security, or the mortgagee under a
5 mortgage against the real property security, and any
6 successor-in-interest of the beneficiary or mortgagee to the deed
7 of trust or mortgage.

8 (f) This section shall not be construed to invalidate or otherwise
9 affect in any manner any rights or obligations arising under
10 contract in connection with a loan or extension of credit, including,
11 without limitation, provisions limiting recourse.

12 (g) This section shall only apply to loans, extensions of credit,
13 guaranties, or other obligations secured by real property security
14 made, renewed, or modified on or after January 1, 1992.

15 *SEC. 5. Section 736 of the Code of Civil Procedure is amended*
16 *to read:*

17 736. (a) Notwithstanding any other provision of law, a
18 secured lender may bring an action for breach of contract against
19 a borrower for breach of any environmental provision made by the
20 borrower relating to the real property security, for the recovery of
21 damages, and for the enforcement of the environmental provision,
22 and that action or failure to foreclose first against collateral shall
23 not constitute an action within the meaning of subdivision (a) of
24 Section 726, or constitute a money judgment for a deficiency or a
25 deficiency judgment within the meaning of Section 580a, 580b, or
26 580d, or subdivision (b) of Section 726. No injunction for the
27 enforcement of an environmental provision may be issued after (1)
28 the obligation secured by the real property security has been fully
29 satisfied, or (2) all of the borrower’s rights, title, and interest in and
30 to the real property security has been transferred in a bona fide
31 transaction to an unaffiliated third party for fair value.

32 (b) The damages a secured lender may recover pursuant to
33 subdivision (a) shall be limited to reimbursement or
34 indemnification of the following:

35 (1) If not pursuant to an order of any federal, state, or local
36 governmental agency relating to the cleanup, remediation, or other
37 response action required by applicable law, those costs relating to
38 a reasonable and good faith cleanup, remediation, or other
39 response action concerning a release or threatened release of

1 hazardous substances which is anticipated by the environmental
2 provision.

3 (2) If pursuant to an order of any federal, state, or local
4 governmental agency relating to the cleanup, remediation, or other
5 response action required by applicable law which is anticipated by
6 the environmental provision, all amounts reasonably advanced in
7 good faith by the secured lender in connection therewith, provided
8 that the secured lender negotiated, or attempted to negotiate, in
9 good faith to minimize the amounts it was required to advance
10 under the order.

11 (3) Indemnification against all liabilities of the secured lender
12 to any third party relating to the breach and not arising from acts,
13 omissions, or other conduct which occur after the borrower is no
14 longer an owner or operator of the real property security, and
15 provided the secured lender is not responsible for the
16 environmentally impaired condition of the real property security
17 in accordance with the standards set forth in subdivision (d) of
18 Section 726.5. For purposes of this paragraph, the term “owner or
19 operator” means those persons described in Section 101(20)(A)
20 of the Comprehensive Environmental Response, Compensation,
21 and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et
22 seq.).

23 (4) Attorneys’ fees and costs incurred by the secured lender
24 relating to the breach.

25 The damages a secured lender may recover pursuant to
26 subdivision (a) shall not include (i) any part of the principal
27 amount or accrued interest of the secured obligation, except for
28 any amounts advanced by the secured lender to cure or mitigate the
29 breach of the environmental provision that are added to the
30 principal amount, and contractual interest thereon, or (ii) amounts
31 which relate to a release which was knowingly permitted, caused,
32 or contributed to by the secured lender or any affiliate or agent of
33 the secured lender.

34 (c) A secured lender may not recover damages against a
35 borrower pursuant to subdivision (a) for amounts advanced or
36 obligations incurred for the cleanup or other remediation of real
37 property security, and related attorneys’ fees and costs, if all of the
38 following are true:



1 (1) The original principal amount of, or commitment for, the
2 loan or other obligation secured by the real property security did
3 not exceed two hundred thousand dollars (\$200,000).

4 (2) In conjunction with the secured lender's acceptance of the
5 environmental provision, the secured lender agreed in writing to
6 accept the real property security on the basis of a completed
7 environmental site assessment and other relevant information
8 from the borrower.

9 (3) The borrower did not permit, cause, or contribute to the
10 release or threatened release.

11 (4) The deed of trust or mortgage covering the real property
12 security has not been discharged, reconveyed, or foreclosed upon.

13 (d) This section is not intended to establish, abrogate, modify,
14 limit, or otherwise affect any cause of action other than that
15 provided by subdivision (a) that a secured lender may have against
16 a borrower under an environmental provision.

17 (e) This section shall apply only to environmental provisions
18 contracted in conjunction with loans, extensions of credit,
19 guaranties, or other obligations made, renewed, or modified on or
20 after January 1, 1992. Notwithstanding the foregoing, this section
21 shall not be construed to validate, invalidate, or otherwise affect
22 in any manner the rights and obligations of the parties to, or the
23 enforcement of, environmental provisions contracted before
24 January 1, 1992.

25 (f) For purposes of this section:

26 (1) "Borrower" means the trustor under a deed of trust, or a
27 mortgagor under a mortgage, where the deed of trust or mortgage
28 encumbers real property security and secures the performance of
29 the trustor or mortgagor under a loan, extension of credit,
30 guaranty, or other obligation. The term includes any
31 successor-in-interest of the trustor or mortgagor to the real
32 property security before the deed of trust or mortgage has been
33 discharged, reconveyed, or foreclosed upon.

34 (2) "Environmental provision" means any written
35 representation, warranty, indemnity, promise, or covenant relating
36 to the existence, location, nature, use, generation, manufacture,
37 storage, disposal, handling, or past, present, or future release or
38 threatened release, of any hazardous substance into, onto, beneath,
39 or from the real property security, or to past, present, or future
40 compliance with any law relating thereto, made by a borrower in

1 conjunction with the making, renewal, or modification of a loan,
2 extension of credit, guaranty, or other obligation involving the
3 borrower, whether or not the representation, warranty, indemnity,
4 promise, or covenant is or was contained in or secured by the deed
5 of trust or mortgage, and whether or not the deed of trust or
6 mortgage has been discharged, reconveyed, or foreclosed upon.

7 (3) “Hazardous substance” means ~~(A) any~~ any of the
8 following:

9 (A) Any “hazardous substance” as defined in subdivision ~~(f)~~
10 ~~(h)~~ of Section 25281 of the Health and Safety Code as effective on
11 ~~January 1, 1991, or as subsequently amended, (B) any.~~

12 (B) Any “waste” as defined in subdivision (d) of Section 13050
13 of the Water Code as effective on January 1, 1991, or as
14 subsequently amended, or ~~(C) petroleum.~~

15 (C) Petroleum, including crude oil or any fraction thereof,
16 natural gas, natural gas liquids, liquefied natural gas, or synthetic
17 gas usable for fuel, or any mixture thereof.

18 (4) “Real property security” means any real property and
19 improvements, other than a separate interest and any related
20 interest in the common area of a residential common interest
21 development, as the terms “separate interest,” “common area,”
22 and “common interest development” are defined in Section 1351
23 of the Civil Code, or real property which contains only 1 to 15
24 dwelling units, which in either case (A) is solely used (i) for
25 residential purposes, or (ii) if reasonably contemplated by the
26 parties to the deed of trust or mortgage, for residential purposes as
27 well as limited agricultural or commercial purposes incidental
28 thereto, and (B) is the subject of an issued certificate of occupancy
29 unless the dwelling is to be owned and occupied by the borrower.

30 (5) “Release” means any spilling, leaking, pumping, pouring,
31 emitting, emptying, discharging, injecting, escaping, leaching,
32 dumping, or disposing into the environment, including continuing
33 migration, of hazardous substances into, onto, or through soil,
34 surface water, or groundwater. The term does not include actions
35 directly relating to the incorporation in a lawful manner of
36 building materials into a permanent improvement to the real
37 property security.

38 (6) “Secured lender” means the beneficiary under a deed of
39 trust against the real property security, or the mortgagee under a
40 mortgage against the real property security, and any

successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 6. Section 25150.1 of the Health and Safety Code is amended to read:

25150.1. The requirements in Sections 25291 and 25292 apply to the construction, operation, maintenance, monitoring, and testing of underground storage tanks, as defined in subdivision (x) (y) of Section 25281, ~~which~~ *that* are required to obtain hazardous waste facilities permits from the department. The department shall adopt regulations implementing the requirements of Sections 25291 and 25292, for regulating the construction, operation, maintenance, monitoring, and testing of underground storage tanks used for the storage of hazardous wastes ~~which standards and regulations~~ *that* are necessary to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment. ~~The department shall adopt the regulations by January 1, 1985. If the regulations are not adopted by that date, the regulations adopted by the board implementing Section 25292 shall be deemed to be the regulations of the department pursuant to this section until new regulations are adopted by the department pursuant to this section.~~

SEC. 7. Section 25187 of the Health and Safety Code is amended to read:

25187. (a) (1) The department or a unified program agency, in accordance with subdivision (l), may issue an order requiring that the violation be corrected and imposing an administrative penalty, for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, whenever the department or unified program agency determines that a person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter or Chapter 6.8 (commencing with Section 25300), or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter or Chapter 6.8 (commencing with Section 25300).

(2) In an order proposing a penalty pursuant to this section, the department or unified program agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety

1 or the environment, the violator's ability to pay the proposed
2 penalty, and the prophylactic effect that the imposition of the
3 proposed penalty would have on both the violator and the
4 regulated community as a whole.

5 (b) The department or a unified program agency, in accordance
6 with subdivision (l), may issue an order requiring corrective action
7 whenever the department or unified program agency determines
8 that there is or has been a release, as defined in Chapter 6.8
9 (commencing with Section 25300), of hazardous waste or
10 constituents into the environment from a hazardous waste facility.

11 (1) In the case of a release of hazardous waste or constituents
12 into the environment from a hazardous waste facility that is
13 required to obtain a permit pursuant to Article 9 (commencing
14 with Section 25200), the department shall pursue the remedies
15 available under this chapter, including the issuance of an order for
16 corrective action pursuant to this section, before using the legal
17 remedies available pursuant to Chapter 6.8 (commencing with
18 Section 25300), except in any of the following circumstances:

19 (A) Where the person who is responsible for the release
20 voluntarily requests in writing that the department issue an order
21 to that person to take corrective action pursuant to Chapter 6.8
22 (commencing with Section 25300).

23 (B) Where the person who is responsible for the release is
24 unable to pay for the cost of corrective action to address the
25 release. For purposes of this subparagraph, the inability of a person
26 to pay for the cost of corrective action shall be determined in
27 accordance with the policies of the Environmental Protection
28 Agency for the implementation of Section 9605 of Title 42 of the
29 United States Code.

30 (C) Where the person responsible for the release is unwilling
31 to perform corrective action to address the release. For purposes
32 of this subparagraph, the unwillingness of a person to take
33 corrective action shall be determined in accordance with the
34 policies of the Environmental Protection Agency for the
35 implementation of Section 9605 of Title 42 of the United States
36 Code.

37 (D) Where the release is part of a regional or multisite
38 groundwater contamination problem that cannot, in its entirety, be
39 addressed using the legal remedies available pursuant to this
40 chapter and for which other releases that are part of the regional

1 or multisite groundwater contamination problem are being
2 addressed using the legal remedies available pursuant to Chapter
3 6.8 (commencing with Section 25300).

4 (E) Where an order for corrective action has already been
5 issued against the person responsible for the release, or the
6 department and the person responsible for the release have, prior
7 to January 1, 1996, entered into an agreement to address the
8 required cleanup of the release pursuant to Chapter 6.8
9 (commencing with Section 25300).

10 (F) Where the hazardous waste facility is owned or operated by
11 the federal government.

12 (2) The order shall include a requirement that the person take
13 corrective action with respect to the release of hazardous waste or
14 constituents, abate the effects thereof, and take any other necessary
15 remedial action.

16 (3) If the order requires corrective action at a hazardous waste
17 facility, the order shall require that corrective action be taken
18 beyond the facility boundary, where necessary to protect human
19 health or the environment.

20 (4) The order shall incorporate, as a condition of the order, any
21 applicable waste discharge requirements issued by the State Water
22 Resources Control Board or a California regional water quality
23 control board, and shall be consistent with all applicable water
24 quality control plans adopted pursuant to Section 13170 of the
25 Water Code and Article 3 (commencing with Section 13240) of
26 Chapter 4 of Division 7 of the Water Code and state policies for
27 water quality control adopted pursuant to Article 3 (commencing
28 with Section 13140) of Chapter 3 of Division 7 of the Water Code
29 existing at the time of the issuance of the order, to the extent that
30 the department or unified program agency determines that those
31 plans and policies are not less stringent than this chapter and
32 regulations adopted pursuant to this chapter. The order may
33 include any more stringent requirement that the department or
34 unified program agency determines is necessary or appropriate to
35 protect water quality.

36 (5) Persons who are subject to an order pursuant to this
37 subdivision include present and prior owners, lessees, or operators
38 of the property where the hazardous waste is located, present or
39 past generators, storers, treaters, transporters, disposers, and
40 handlers of hazardous waste, and persons who arrange, or have

1 arranged, by contract or other agreement, to store, treat, transport,
2 dispose of, or otherwise handle hazardous waste.

3 (6) For purposes of this subdivision, “hazardous waste
4 facility” includes the entire site that is under the control of an
5 owner or operator engaged in the management of hazardous waste.

6 (c) Any order issued pursuant to this section shall be served by
7 personal service or certified mail and shall inform the person so
8 served of the right to a hearing. If the unified program agency
9 issues the order pursuant to this section, the order shall state
10 whether the hearing procedure specified in paragraph (2) of
11 subdivision (f) may be requested by the person receiving the order.

12 (d) Any person served with an order pursuant to this section
13 who has been unable to resolve any violation or deficiency on an
14 informal basis with the department or unified program agency
15 may, within 15 days after service of the order, request a hearing
16 pursuant to subdivision (e) or (f) by filing with the department or
17 unified program agency a notice of defense. The notice shall be
18 filed with the office that issued the order. A notice of defense shall
19 be deemed filed within the 15-day period provided by this
20 subdivision if it is postmarked within that 15-day period. If no
21 notice of defense is filed within the time limits provided by this
22 subdivision, the order shall become final.

23 (e) Any hearing requested on an order issued by the department
24 shall be conducted within 90 days after receipt of the notice of
25 defense by an administrative law judge of the Office of
26 Administrative Hearings of the Department of General Services in
27 accordance with Chapter 4.5 (commencing with Section 11400) of
28 Part 1 of Division 3 of Title 2 of the Government Code, and the
29 department shall have all the authority granted to an agency by
30 those provisions.

31 (f) Except as provided in subparagraph (B) of paragraph (2), a
32 person requesting a hearing on an order issued by a unified
33 program agency may select the hearing process specified in either
34 paragraph (1) or (2) in the notice of defense filed with the unified
35 program agency pursuant to subdivision (d). Within 90 days of
36 receipt of the notice of defense by the unified program agency, the
37 hearing shall be conducted using one of the following procedures:

38 (1) An administrative law judge of the Office of Administrative
39 Hearings of the Department of General Services shall conduct the
40 hearing in accordance with Chapter 4.5 (commencing with

1 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
2 Code.

3 (2) (A) A hearing officer designated by the unified program
4 agency shall conduct the hearing in accordance with Chapter 4.5
5 (commencing with Section 11400) of Part 1 of Division 3 of Title
6 2 of the Government Code, and the unified program agency shall
7 have all the authority granted to an agency by those provisions.
8 When a hearing is conducted by a unified program agency
9 pursuant to this paragraph, the unified program agency shall,
10 within 60 days of the hearing, issue a decision.

11 (B) A person requesting a hearing on an order issued by a
12 unified program agency may select the hearing process specified
13 in this paragraph in a notice of defense filed pursuant to
14 subdivision (d) only if the unified program agency has, as of the
15 date the order is issued pursuant to subdivision (c), selected a
16 designated hearing officer and established a program for
17 conducting a hearing in accordance with this paragraph.

18 (g) The hearing decision issued pursuant to subdivision (f)
19 shall be effective and final upon issuance. Copies of the decision
20 shall be served by personal service or by certified mail upon the
21 party served with the order and upon other persons who appeared
22 at the hearing and requested a copy.

23 (h) Any provision of an order issued under this section, except
24 the imposition of an administrative penalty, shall take effect upon
25 issuance by the department or unified program agency if the
26 department or unified program agency finds that the violation or
27 violations of law associated with that provision may pose an
28 imminent and substantial endangerment to the public health or
29 safety or the environment, and a request for a hearing shall not stay
30 the effect of that provision of the order pending a hearing decision.
31 However, if the department or unified program agency determines
32 that any or all provisions of the order are so related that the public
33 health or safety or the environment can be protected only by
34 immediate compliance with the order as a whole, then the order as
35 a whole, except the imposition of an administrative penalty, shall
36 take effect upon issuance by the department or unified program
37 agency. A request for a hearing shall not stay the effect of the order
38 as a whole pending a hearing decision.

39 (i) A decision issued pursuant to this section may be reviewed
40 by the court pursuant to Section 11523 of the Government Code.

1 In all proceedings pursuant to this section, the court shall uphold
2 the decision of the department or unified program agency if the
3 decision is based upon substantial evidence in the whole record.
4 The filing of a petition for writ of mandate shall not stay any action
5 required pursuant to this chapter or the accrual of any penalties
6 assessed pursuant to this chapter. This subdivision does not
7 prohibit the court from granting any appropriate relief within its
8 jurisdiction.

9 (j) All administrative penalties collected from actions brought
10 by the department pursuant to this section shall be placed in a
11 separate subaccount in the Toxic Substances Control Account and
12 shall be available only for transfer to the Site Remediation
13 Account or the Expedited Site Remediation Trust Fund and for
14 expenditure by the department upon appropriation by the
15 Legislature.

16 (k) All administrative penalties collected from an action
17 brought by a unified program agency pursuant to this section shall
18 be paid to the ~~city or county whose~~ unified program agency *that*
19 imposed the penalty, and shall be deposited into a special account
20 that shall be expended to fund the activities of the unified program
21 agency in enforcing this chapter pursuant to Section 25180.

22 (l) The authority granted under this section to a unified
23 program agency is limited to both of the following:

24 (1) The issuance of orders to impose penalties and to correct
25 violations of the requirements of this chapter and its implementing
26 regulations, only when the violations are violations of
27 requirements applicable to hazardous waste generators and
28 persons operating pursuant to a permit-by-rule, conditional
29 authorization, or conditional exemption, when the violations
30 occur at a unified program facility within the jurisdiction of the
31 CUPA.

32 (2) The issuance of orders to require corrective action when
33 there has been a release of hazardous waste or constituents only
34 when the unified program agency is authorized to do so pursuant
35 to Section 25404.1.

36 (m) The CUPA shall annually submit a summary report to the
37 department on the status of orders issued by the unified program
38 agencies under this section and Section 25187.1.

39 (n) The CUPA shall consult with the district attorney for the
40 county on the development of policies to be followed in exercising

1 the authority delegated pursuant to this section and Section
2 25187.1, as they relate to the authority of unified program agencies
3 to issue orders.

4 (o) The CUPA shall arrange to have appropriate legal
5 representation in administrative hearings that are conducted by an
6 administrative law judge of the Office of Administrative Hearings
7 of the Department of General Services, and when a decision issued
8 pursuant to this section is appealed to the superior court.

9 (p) The department may adopt regulations to implement this
10 section and paragraph (2) of subdivision (a) of Section 25187.1 as
11 they relate to the authority of unified program agencies to issue
12 orders. The regulations shall include, but not be limited to, all of
13 the following requirements:

14 (1) Provisions to ensure coordinated and consistent application
15 of this section and Section 25187.1 when both the department and
16 the unified program agency have or will be issuing orders under
17 one or both of these sections at the same facility.

18 (2) Provisions to ensure that the enforcement authority granted
19 to the unified program agencies will be exercised consistently
20 throughout the state.

21 (3) Minimum training requirements for staff of the unified
22 program agency relative to this section and Section 25187.1.

23 (4) Procedures to be followed by the department to rescind the
24 authority granted to a unified program agency under this section
25 and Section 25187.1, if the department finds that the unified
26 program agency is not exercising that authority in a manner
27 consistent with this chapter and Chapter 6.11 (commencing with
28 Section 25404) and the regulations adopted pursuant thereto.

29 (q) Except for an enforcement action taken pursuant to this
30 chapter or Chapter 6.8 (commencing with Section 25300), this
31 section does not otherwise affect the authority of a local agency to
32 take any action under any other provision of law.

33 *SEC. 8. Section 25262 of the Health and Safety Code is*
34 *amended to read:*

35 25262. (a) A responsible party for a hazardous materials
36 release site may request the committee at any time to designate an
37 administering agency to oversee a site investigation and remedial
38 action at the site. The committee shall designate an administering
39 agency as responsible for the site within 45 days of the date the
40 request is received. A request to designate an administering agency

1 may be denied only if the committee makes one of the following
2 findings:

3 (1) No single agency in state or local government has the
4 expertise needed to adequately oversee a site investigation and
5 remedial action at the site.

6 (2) Designating an administering agency will have the effect of
7 reversing a regulatory or enforcement action initiated by an
8 agency that has jurisdiction over the site, a facility on the site, or
9 an activity at the site.

10 (3) Designating an administering agency will prevent a
11 regulatory or enforcement action required by federal law or
12 regulations.

13 (4) The administering agency and the responsible party are
14 local agencies formed, in whole or in part, by the same political
15 subdivision.

16 (b) A responsible party who requests the designation of an
17 administering agency for a hazardous materials release site shall
18 provide the committee with a brief description of the site, an
19 analysis of the known or suspected nature of the release or
20 threatened release that is the subject of required site investigation
21 or remedial action, a description of the type of facility from which
22 the release occurred or the type of activity that caused the release,
23 a specification of the regulatory or enforcement actions that have
24 been taken, or are pending, with respect to the release, and a
25 statement of which agency the responsible party believes should
26 be designated as administering agency for the site.

27 (c) (1) The committee shall take all of the following factors
28 into account in determining which agency to designate as
29 administering agency for a site:

30 (A) The type of release that is the subject of site investigation
31 and remedial action.

32 (B) The nature of the threat that the release poses to human
33 health and safety or to the environment.

34 (C) The source of the release, the type of facility or activity
35 from which the release occurred, the regulatory programs that
36 govern the facility or activity involved, and the agency or agencies
37 that administer those regulatory programs.

38 (D) The regulatory history of the site, the types of regulatory
39 actions or enforcement actions that have been taken with respect
40 to the site or the facility or activity from which the release

1 occurred, and the experience and involvement that various
2 agencies have had with the site.

3 (E) The capabilities and expertise of the agencies that are
4 candidates for designation as the administering agency for the site
5 and the degree to which those capabilities and that expertise are
6 applicable to the type of release at the site, the nature of the threat
7 that the release poses to health and safety or the environment and
8 the probable remedial measures that will be required.

9 (2) After weighing the factors described in paragraph (1) as
10 they apply to the site, the committee shall use the criteria specified
11 in subparagraphs (A), (B), (C), and (D) as guidelines for
12 designating the administering agency. If more than one of the
13 criteria apply to the site, the committee shall use its best judgment,
14 taking into account the known facts concerning the hazardous
15 materials release at the site and its regulatory history, in
16 determining which agency may best serve as the administering
17 agency. The criteria are as follows:

18 (A) The administering agency shall be the Department of Toxic
19 Substances Control if one of the following applies:

20 (i) The department has issued an order, or otherwise initiated
21 action, with respect to the release at the site pursuant to Section
22 25355, 25355.5, or 25358.3.

23 (ii) The department has issued an order for corrective action at
24 the site pursuant to Section 25187.

25 (iii) The source of the release is a facility or hazardous waste
26 management unit or an activity that is, or was, regulated by the
27 department pursuant to Chapter 6.5 (commencing with Section
28 25100).

29 (iv) The department is conducting, or has conducted, oversight
30 of the site investigation and remedial action at the site at the request
31 of the responsible party.

32 (B) The administering agency shall be the California regional
33 water quality control board for the region in which the site is
34 located, if one of the following applies:

35 (i) The California regional water quality control board has
36 issued a cease and desist order pursuant to Section 13301, or a
37 cleanup and abatement order pursuant to Section 13304 of the
38 Water Code in connection with the release at the site.

39 (ii) The source of the release is a facility or an activity that is
40 subject to waste discharge requirements issued by the California

1 regional water quality control board pursuant to Section 13263 of
2 the Water Code or that is regulated by the California regional water
3 quality control board pursuant to Article 5.5 (commencing with
4 Section 25159.10) of, or Article 9.5 (commencing with Section
5 25208) of, Chapter 6.5, or pursuant to Chapter 6.67 (commencing
6 with Section 25270).

7 (iii) The California regional water quality control board has
8 jurisdiction over the site pursuant to Chapter 5.6 (commencing
9 with Section 13390) of Division 7 of the Water Code.

10 (C) The administering agency shall be the Department of Fish
11 and Game if the release has polluted or contaminated the waters
12 of the state and the department has taken action against the
13 responsible party pursuant to Section 2014 or 12015 of, or Article
14 1 (commencing with Section 5650) of Chapter 2 of Part 1 of
15 Division 6 of, the Fish and Game Code, subsection (f) of Section
16 107 of the Comprehensive Environmental Response,
17 Compensation, and Liability Act, as amended, (42 U.S.C. Sec.
18 9607 (f)), or Section 311 of the Federal Water Pollution Act, as
19 amended (33 U.S.C. Sec. 1321).

20 (D) The administering agency shall be a local agency if any one
21 of the following circumstances is applicable:

22 (i) The source of the release at the site is an underground
23 storage tank, as defined in subdivision ~~(x)~~(y) of Section 25281, the
24 local agency is the agency described in subdivision ~~(g)~~ (i) of
25 Section 25281, and there is no evidence of any extensive
26 groundwater contamination at the site.

27 (ii) The local agency has accepted responsibility for overseeing
28 the site investigation or remedial action at the site and a state
29 agency is not involved.

30 (iii) The local agency has agreed to oversee the site
31 investigation or remedial action at the site and is certified, or has
32 been approved, by a state agency to conduct that oversight.

33 (d) A responsible party for a hazardous materials release site
34 may request the designation of an administering agency for the site
35 pursuant to this section only once. The action of the committee on
36 the request is a final action and is not subject to further
37 administrative or judicial review.

38 SEC. 9. Section 25281 of the Health and Safety Code is
39 amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) “Automatic line leak detector” means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. “Automatic line leak detector” includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) “Board” means the State Water Resources Control Board. “Regional board” means a California regional water quality control board.

(c) “Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d) (1) “Certified Unified Program Agency” or “CUPA” means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) “Participating Agency” or “PA” means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) “Unified Program Agency” or “UPA” means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. . After a CUPA has been certified by the secretary, the UPA shall be the only

1 local agency authorized to enforce the requirements of this chapter
2 listed in paragraph (3) of subdivision (c) of Section 25404 within
3 the jurisdiction of the CUPA. This paragraph shall not be construed
4 to limit the authority or responsibility granted to the board and the
5 regional boards by this chapter to implement and enforce this
6 chapter and the regulations adopted pursuant to this chapter.

7 (e) “Department” means the Department of Toxic Substances
8 Control.

9 (f) “Facility” means any one, or combination of, underground
10 storage tanks used by a single business entity at a single location
11 or site.

12 (g) “Federal act” means Subchapter IX (commencing with
13 Section 6991) of Chapter 82 of Title 42 of the United States Code,
14 as added by the Hazardous and Solid Waste Amendments of 1984
15 (P.L. 98-616), or as it may subsequently be amended or
16 supplemented.

17 (h) “Hazardous substance” means either of the following:

18 (1) All of the following liquid and solid substances, unless the
19 department, in consultation with the board, determines that the
20 substance could not adversely affect the quality of the waters of the
21 state:

22 (A) Substances on the list prepared by the Director of Industrial
23 Relations pursuant to Section 6382 of the Labor Code.

24 (B) Hazardous substances, as defined in Section 25316.

25 (C) Any substance or material that is classified by the National
26 Fire Protection Association (NFPA) as a flammable liquid, a class
27 II combustible liquid, or a class III-A combustible liquid.

28 (2) Any regulated substance, as defined in subsection (2) of
29 Section 6991 of Title 42 of the United States Code, as that section
30 reads on January 1, 1989, or as it may subsequently be amended
31 or supplemented.

32 (i) “Local agency” means the local agency authorized,
33 pursuant to Section 25283, to implement this chapter.

34 (j) “Operator” means any person in control of, or having daily
35 responsibility for, the daily operation of an underground storage
36 tank system.

37 (k) “Owner” means the owner of an underground storage tank.

38 (l) “Person” means an individual, trust, firm, joint stock
39 company, corporation, including a government corporation,
40 partnership, limited liability company, or association. “Person”

1 also includes any city, county, district, the state, another state of the
2 United States, any department or agency of this state or another
3 state, or the United States to the extent authorized by federal law.

4 (m) “Pipe” means any pipeline or system of pipelines that is
5 used in connection with the storage of hazardous substances and
6 that is not intended to transport hazardous substances in interstate
7 or intrastate commerce or to transfer hazardous materials in bulk
8 to or from a marine vessel.

9 (n) “Primary containment” means the first level of
10 containment, such as the portion of a tank that comes into
11 immediate contact on its inner surface with the hazardous
12 substance being contained.

13 (o) “Product tight” means impervious to the liquid and vapor
14 of the substance that is contained, or is to be contained, so as to
15 prevent the seepage of the substance from the containment.

16 (p) “Release” means any spilling, leaking, emitting,
17 discharging, escaping, leaching, or disposing from an
18 underground storage tank into or on the waters of the state, the
19 land, or the subsurface soils.

20 (q) “Secondary containment” means the level of containment
21 external to, and separate from, the primary containment.

22 (r) “Single walled” means construction with walls made of
23 only one thickness of material. For the purposes of this chapter,
24 laminated, coated, or clad materials are considered single walled.

25 (s) “Special inspector” means a professional engineer,
26 registered pursuant to Chapter 7 (commencing with Section 6700)
27 of Division 3 of the Business and Professions Code, who is
28 qualified to attest, at a minimum, to structural soundness, seismic
29 safety, the compatibility of construction materials with contents,
30 cathodic protection, and the mechanical compatibility of the
31 structural elements of underground storage tanks.

32 (t) “Storage” or “store” means the containment, handling, or
33 treatment of hazardous substances, either on a temporary basis or
34 for a period of years. “Storage” or “store” does not include the
35 storage of hazardous wastes in an underground storage tank if the
36 person operating the tank has been issued a hazardous waste
37 facilities permit by the department pursuant to Section 25200 or
38 granted interim status under Section 25200.5.

39 (u) “Tank” means a stationary device designed to contain an
40 accumulation of hazardous substances which is constructed

1 primarily of nonearthen materials , including, but not limited to,
2 wood, concrete, steel, or plastic that provides structural support.

3 (v) “Tank integrity test” means a test method capable of
4 detecting an unauthorized release from an underground storage
5 tank consistent with the minimum standards adopted by the board.

6 (w) “Tank tester” means an individual who performs tank
7 integrity tests on underground storage tanks.

8 (x) “Unauthorized release” means any release of any
9 hazardous substance that does not conform to this chapter,
10 including, but not limited to, an unauthorized release specified in
11 Section 25295.5, unless this release is authorized by the board or
12 a regional board pursuant to Division 7 (commencing with Section
13 13000) of the Water Code.

14 (y) (1) “Underground storage tank” means any one or
15 combination of tanks, including pipes connected thereto, that is
16 used for the storage of hazardous substances and that is
17 substantially or totally beneath the surface of the ground.
18 “Underground storage tank” does not include any of the
19 following:

20 (A) A tank with a capacity of 1,100 gallons or less that is
21 located on a farm and that stores motor vehicle fuel used primarily
22 for agricultural purposes and not for resale.

23 (B) A tank that is located on a farm or at the residence of a
24 person, that has a capacity of 1,100 gallons or less, and that stores
25 home heating oil for consumptive use on the premises where
26 stored.

27 (C) Structures, such as sumps, separators, storm drains, catch
28 basins, oil field gathering lines, refinery pipelines, lagoons,
29 evaporation ponds, well cellars, separation sumps, lined and
30 unlined pits, sumps and lagoons. A sump that is a part of a
31 monitoring system required under Section 25291 or 25292 and
32 sumps or other structures defined as underground storage tanks
33 under the federal act are not exempted by this subparagraph.

34 (D) A tank holding hydraulic fluid for a closed loop mechanical
35 system that uses compressed air or hydraulic fluid to operate lifts,
36 elevators, and other similar devices.

37 (2) Structures identified in subparagraphs (C) and (D) of
38 paragraph (1) may be regulated by the board and any regional
39 board pursuant to the Porter-Cologne Water Quality Control Act



(Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) “Underground tank system” or “tank system” means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) “Unified program facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) “Unified program facility permit” means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) “Permit” means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

SEC. 10. Section 25281.5 of the Health and Safety Code is amended to read:

25281.5. (a) Notwithstanding subdivision ~~(t)~~ (m) of Section 25281, for purposes of this chapter “pipe” means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to ~~49 Part 195 (commencing with Section 195.0) of Subchapter D of Chapter 1 of Title 49 of the Code of Federal Regulations, Part 195.~~

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles ~~which~~ *that* are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision ~~(x)~~ (y) of Section 25281, “underground storage tank” does not include either of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

SEC. 11. Section 25284 of the Health and Safety Code is amended to read:

25284. (a) (1) Except as provided in subdivision (c), no person ~~shall~~ *may* own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

(2) If the operator is not the owner of the tank, or if the permit is issued to a person other than the owner or operator of the tank, the permittee shall ensure that both the owner and the operator of the tank are provided with a copy of the permit.

(3) If the permit is issued to a person other than the operator of the tank, that person shall do all of the following:

(A) Enter into a written agreement with the operator of the tank to monitor the tank system as set forth in the permit.

(B) Provide the operator with a copy or summary of Section 25299 in the form that the board specifies by regulation.

(C) Notify the local agency of any change of operator.

(b) Each local agency shall prepare a form that provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days from the date that the ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria

specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days from the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

~~(e) Except as provided in subdivision (g), a permit issued for a petroleum underground storage tank system that meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations adopted pursuant to Section 25299.3 shall include an upgrade compliance certificate, the color, size, and content of which shall be specified by the board, that documents that the petroleum underground storage tank system meets the requirements of Section 25291 or subdivisions (d) and (e) of Section 25292 and related regulations. The owner shall place the upgrade compliance certificate in a conspicuous location that can be readily viewed by any person depositing petroleum into the underground storage tank system.~~

~~(f) On or before December 22, 1998, the board shall notify all persons who may deliver petroleum to an underground storage tank of where they can obtain a list of underground storage tank facilities that have been issued an upgrade compliance certificate. Local agencies shall maintain a list of underground storage tank facilities that have been issued an upgrade compliance certificate and shall provide this information to anyone requesting it.~~

~~(g) (1) Notwithstanding subdivision (e), if the appropriate local agency responsible for issuing a permit to own or operate an underground storage tank, including the upgrade compliance certificate required by subdivision (e), receives authorization from the board for an extension pursuant to subdivision (k), an owner or operator located in the jurisdiction of that local agency may~~

~~1 certify that the tank or tanks are in compliance with the
2 requirements of Section 25291 or subdivisions (d) and (e) of
3 Section 25292, and the related regulations adopted pursuant to
4 Section 25299.3.~~

~~5 (2) A self-certification by an operator pursuant to this
6 subdivision shall be valid for a period not to exceed 90 days from
7 the date the board grants the local agency the authority to extend
8 applicable deadlines pursuant to subdivision (k), or the date the
9 local agency completes its inspection and issues or denies an
10 upgrade compliance certificate, whichever date is earlier. Under
11 no circumstances is self-certification valid after March 22, 1999.
12 After March 22, 1999, an upgrade compliance certificate, as issued
13 by the appropriate local agency, is required before petroleum may
14 be deposited into an underground storage tank that meets the
15 requirements set forth in paragraph (1).~~

~~16 (h) An owner or operator certifying compliance pursuant to
17 subdivision (g) shall place on the underground storage tank
18 system, in plain view, the following self-certification statement,
19 with the operator's signature:~~

~~20 "I certify under penalty of perjury that this tank meets the
21 applicable requirements set forth in subdivision (g) of Section
22 25284 of the Health and Safety Code."~~

~~23 (i) Any owner or operator who certifies that an underground
24 storage tank meets the requirements set forth in subdivision (g)
25 which in fact had not been met at the time the statement in
26 subdivision (h) was posted shall be subject to a civil penalty of up
27 to twenty-five thousand dollars (\$25,000) for each facility for each
28 day of violation.~~

~~29 (j) This section does not supersede, limit, or supplant any local
30 control duly adopted pursuant to Section 13869.7 or Article 2
31 (commencing with Section 50020) of Chapter 1 of Part 1 of
32 Division 1 of Title 5 of the Government Code.~~

~~33 (k) On or before December 1, 1998, a local agency responsible
34 for issuing a permit to own or operate an underground storage tank,
35 including the upgrade compliance certificate required by
36 subdivision (e), may petition the board for a 90-day extension of
37 the deadline for compliance with subdivisions (e) and (f). The
38 board, acting itself, or by order of the executive director, shall
39 either approve or deny the petition within 30 days of receiving the
40 petition. The local agency shall include in its petition an~~

1 ~~explanation of the circumstances necessitating the extension and~~
2 ~~the steps the local agency will take to address those circumstances.~~
3 ~~The board shall deny the petition if the board finds that the local~~
4 ~~agency does not need additional time to meet the requirements of~~
5 ~~subdivisions (e) and (f).~~

6 *SEC. 12. Section 25288 of the Health and Safety Code is*
7 *amended to read:*

8 25288. (a) The local agency shall inspect every underground
9 tank system within its jurisdiction at least once every year. The
10 purpose of the inspection is to determine whether the tank system
11 complies with the applicable requirements of this chapter and the
12 regulations adopted by the board pursuant to Section 25299.3,
13 including the design and construction standards of Section 25291
14 or 25292, whichever is applicable, whether the operator has
15 monitored and tested the tank system as required by the permit, and
16 whether the tank system is in a safe operating condition.

17 (b) After an inspection conducted pursuant to subdivision (a),
18 the local agency shall prepare a compliance report detailing the
19 inspection and shall send a copy of this report to the permitholder
20 and the owner or operator, if the owner or operator is not the
21 permitholder. Any report prepared pursuant to this section shall be
22 consolidated into any other inspection reports required pursuant to
23 Chapter 6.11 (commencing with Section 25404), the requirements
24 listed in subdivision (c) of Section 25404, and the regulations
25 adopted to implement the requirements listed in subdivision (c) of
26 Section 25404.

27 (c) In lieu of the annual local agency inspections, the local
28 agency may require the permitholder to employ a special inspector
29 to conduct the annual inspection. The local agency shall supply the
30 permitholder with a list of at least three special inspectors that are
31 qualified to conduct the inspection. The permitholder shall employ
32 a special inspector from the list provided by the local agency. The
33 special inspector's authority shall be the same as that of the local
34 agency as set forth in subdivision (a).

35 (d) Within 60 days after receiving a compliance report or
36 special inspection report prepared in accordance with subdivision
37 (b) or (c), respectively, the permitholder shall file with the local
38 agency a plan to implement all recommendations contained in the
39 compliance report or shall demonstrate, to the satisfaction of the
40 local agency, why these recommendations should not be

1 implemented. Any corrective action conducted pursuant to the
2 recommendations in the report shall be taken pursuant to Sections
3 25296.10 and 25299.36 and 25299.37.

4 *SEC. 13. Section 25292.3 of the Health and Safety Code is*
5 *repealed.*

6 ~~25292.3.—(a) On and after January 1, 1999, no person shall~~
7 ~~deposit petroleum into an underground storage tank system unless~~
8 ~~the underground storage tank system meets the requirements of~~
9 ~~Section 25291 or subdivisions (d) and (e) of Section 25292 and~~
10 ~~related regulations adopted pursuant to Section 25299.3.~~

11 ~~(b) Any person depositing petroleum into an underground~~
12 ~~storage tank system shall verify that the system meets the~~
13 ~~requirements of Section 25291 or subdivisions (d) and (e) of~~
14 ~~Section 25292, and related regulations adopted pursuant to~~
15 ~~Section 25299.3, by taking one of the following actions:~~

16 ~~(1) Viewing the upgrade compliance certificate for the~~
17 ~~petroleum underground storage tank system displayed pursuant to~~
18 ~~subdivision (e) of Section 25284 or viewing a statement placed on~~
19 ~~the underground tank system pursuant to subdivision (h) of~~
20 ~~Section 25284.~~

21 ~~(2) Obtaining written verification from the local agency that~~
22 ~~the petroleum underground storage tank system is on a list~~
23 ~~maintained by a local agency pursuant to subdivision (f) of Section~~
24 ~~25284.~~

25 ~~(3) Obtaining a correct copy of the upgrade compliance~~
26 ~~certificate from the owner or operator of the petroleum~~
27 ~~underground storage tank system.~~

28 *SEC. 14. Section 25292.3 is added to the Health and Safety*
29 *Code, to read:*

30 25292.3. (a) Upon the discovery of a significant violation of
31 any requirement in this chapter or of any regulation adopted
32 pursuant to this chapter, the local agency may affix a red tag, in
33 plain view, to the fill pipe of the noncompliant underground
34 storage tank system in order to provide notice that delivery of
35 petroleum into the system is prohibited.

36 (b) No owner or operator of a facility may deposit or allow the
37 deposit of petroleum into an underground storage tank system that
38 has a red tag affixed to the system's fill pipe.

39 (c) No person may deposit petroleum into an underground
40 storage tank system that has a red tag affixed to its fill pipe.

(d) No person shall remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(e) A red tag may not be removed until the local agency has inspected the underground storage tank system and established that it is no longer in significant violation. After making that determination, the local agency shall remove the red tag within 24 hours or as soon thereafter as reasonably possible.

(f) The board shall adopt regulations to define significant violations for purposes of this section.

SEC. 15. Section 25296.10 is added to the Health and Safety Code, to read:

25296.10. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this chapter and the regulations adopted pursuant to Section 25299.3. In adopting corrective action regulations, the board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b). The corrective action regulations adopted by the board pursuant to Section 25299.77 to implement Section 25299.37, as that section read on January 1, 2002, that were in effect before January 1, 2003, shall continue in effect on and after January 1, 2003, until revised by the board to implement this section and shall be deemed to have been adopted pursuant to Section 25299.3.

(b) Any corrective action conducted pursuant to this chapter shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment

1 and investigation, pursuant to an oral or written order, directive,
2 notification, or approval issued pursuant to this section, or
3 pursuant to a cleanup and abatement order or other oral or written
4 directive issued pursuant to Division 7 (commencing with Section
5 13000) of the Water Code, the owner, operator, or other
6 responsible party shall prepare a work plan that details the
7 corrective action the owner, operator, or other responsible party
8 shall take to comply with the requirements of subdivisions (a) and
9 (b) and the corrective action regulations adopted pursuant to
10 Section 25299.3.

11 (2) The work plan required by paragraph (1) shall be prepared
12 in accordance with the regulations adopted pursuant to Section
13 25299.3. The work plan shall include a schedule and timeline for
14 corrective action.

15 (3) At the request of the owner, operator, or other responsible
16 party, the local agency, the board, or the regional board shall
17 review a work plan prepared pursuant to paragraph (1) and either
18 accept the work plan, if it meets the requirements of the section, or
19 disapprove the work plan if it does not meet those requirements. If
20 the local agency, board, or the regional board accepts the work
21 plan, it shall indicate to the owner, operator, or other responsible
22 party, the actions or other elements of the work plan that are, in all
23 likelihood, adequate and necessary to meet the requirements of this
24 section, and the actions and elements that may be unnecessary. If
25 the local agency, board, or regional board disapproves the work
26 plan, it shall state the reasons for the disapproval.

27 (4) In the interests of minimizing environmental contamination
28 and promoting prompt cleanup, the responsible party may begin
29 implementation of the proposed action after the work plan has
30 been submitted but before the work plan has received regulatory
31 agency acceptance, except that implementation of the work plan
32 may not begin until 60 calendar days from the date of submittal,
33 unless the responsible party is otherwise directed in writing by the
34 regulatory agency. However, before beginning implementation
35 pursuant to this paragraph, the responsible party shall notify the
36 regulatory agency of the intent to initiate proposed actions set
37 forth in the submitted work plan.

38 (5) The owner, operator, or other responsible party shall
39 conduct corrective actions in accordance with the work plan
40 approved pursuant to the section.

(6) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(d) (1) This subdivision applies only to an unauthorized release from a petroleum underground storage tank that is subject to Chapter 6.75 (commencing with Section 25299.10).

(2) Notwithstanding Section 25297.1, the board shall implement a procedure that does not assess an owner, operator, or responsible party taking corrective action pursuant to this chapter for the costs of a local oversight program pursuant to paragraph (4) of subdivision (d) of Section 25297.1. The board shall institute an internal procedure for assessing, reviewing, and paying those costs directly between the board and the local agency.

(e) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(f) (1) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the board, a regional board, or the local agency may undertake or contract for corrective action.

(2) The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to this subdivision. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency affecting public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

(3) The board, a regional board, or local agency may recover its costs incurred under this subdivision pursuant to Section 13304

1 of the Water Code. If the unauthorized release is from an
2 underground storage tank that is subject to Chapter 6.75
3 (commencing with Section 25299.10), the board, a regional board,
4 or local agency may also recover its costs pursuant to Section
5 25299.70.

6 (g) The following uniform closure letter shall be issued to the
7 owner, operator, or other responsible party taking corrective
8 action at an underground storage tank site by the local agency or
9 the regional board with jurisdiction over the site, or the board,
10 upon a finding that the underground storage tank site is in
11 compliance with the requirements of subdivisions (a) and (b) and
12 with any corrective action regulations adopted pursuant to Section
13 25299.3 and that no further corrective action is required at the site:

14 “[Case File Number]

15 Dear [Responsible Party]

16 This letter confirms the completion of a site investigation and
17 corrective action for the underground storage tank(s) formerly
18 located at the above-described location. Thank you for your
19 cooperation throughout this investigation. Your willingness and
20 promptness in responding to our inquiries concerning the former
21 underground storage tank(s) are greatly appreciated.

22 Based on information in the above-referenced file and with the
23 provision that the information provided to this agency was
24 accurate and representative of site conditions, this agency finds
25 that the site investigation and corrective action carried out at your
26 underground storage tank(s) site is in compliance with the
27 requirements of subdivisions (a) and (b) of Section 25296.10 of the
28 Health and Safety Code and with corrective action regulations
29 adopted pursuant to Section 25299.3 of the Health and Safety
30 Code and that no further action related to the petroleum release(s)
31 at the site is required.

32 This notice is issued pursuant to subdivision (g) of Section
33 25296.10 of the Health and Safety Code.

34 Please contact our office if you have any questions regarding
35 this matter.

36 Sincerely,

37 [Name of Board Executive Director, Regional Board Executive
38 Officer, or Local Agency Director]”

39 (h) Any order, directive, notification, or approval issued under
40 Section 25299.37 as that section read on January 1, 2002, that was

1 issued on or before January 1, 2003, shall be deemed to have been
2 issued pursuant to this section.

3 SEC. 16. Section 25296.15 is added to the Health and Safety
4 Code, to read:

5 25296.15. (a) No closure letter pursuant to this chapter shall
6 be issued with respect to a site upon which there was an
7 unauthorized release from an underground storage tank subject to
8 Chapter 6.75 (commencing with Section 25299.10), unless the soil
9 or groundwater, or both, where applicable, at the site have been
10 tested for methyl tertiary butyl ether (MTBE) and the results of that
11 testing are known to the regional board.

12 (b) Subdivision (a) does not apply to a closure letter for a tank
13 case for which the board, a regional board, or local agency
14 determines that the tank has only contained diesel or jet fuel, or has
15 not been in use since 1986.

16 SEC. 17. Section 25296.20 is added to the Health and Safety
17 Code, to read:

18 25296.20. (a) The local agency, the board, or a regional
19 board shall not consider corrective action or site closure proposals
20 from the primary or active responsible party, issue a closure letter,
21 or make a determination that no further corrective action is
22 required with respect to a site upon which there was an
23 unauthorized release from an underground storage tank unless all
24 current record owners of fee title to the site of the proposed action
25 have been notified of the proposed action by the local agency,
26 board, or regional board.

27 (b) The local agency, board, or regional board shall take all
28 reasonable steps necessary to accommodate responsible
29 landowner participation in the cleanup or site closure process and
30 shall consider all input and recommendations from any
31 responsible landowner wishing to participate.

32 SEC. 18. Section 25296.25 is added to the Health and Safety
33 Code, to read:

34 25296.25. (a) (1) Unless the board, in consultation with
35 local agencies and the regional board, determines that a site is an
36 emergency site, the board, at the request of a responsible party who
37 is eligible for reimbursement of corrective action costs under
38 Chapter 6.75 (commencing with Section 25299.10), may suspend
39 additional corrective action or investigation work at a site, based
40 on a preliminary site assessment conducted in accordance with the

1 *corrective action regulations adopted by the board, but the board*
2 *shall not suspend any of the following activities pursuant to this*
3 *section:*

4 (A) *Removal of, or approved modifications of, existing tanks.*

5 (B) *Excavation of petroleum saturated soil or removal of excess*
6 *petroleum from saturated soil.*

7 (C) *Removal of free product from the saturated and*
8 *unsaturated zones.*

9 (D) *Periodic monitoring to ensure that released petroleum is*
10 *not migrating in an uncontrolled manner that will cause the site to*
11 *become an emergency site.*

12 (2) *For purposes of this subdivision, “emergency site” means*
13 *a site that, because of an unauthorized release of petroleum, meets*
14 *one of the following conditions:*

15 (A) *The site presents an imminent threat to public health or*
16 *safety or the environment.*

17 (B) *The site poses a substantial probability of causing a*
18 *condition of contamination or nuisance, as defined in Section*
19 *13050 of the Water Code, or of causing pollution of a source of*
20 *drinking water at a level that is a violation of a primary or*
21 *secondary drinking water standard adopted by the State*
22 *Department of Health Services pursuant to Chapter 4*
23 *(commencing with Section 116270) of Part 12 of Division 104.*

24 (b) *The suspension shall continue until one of the following*
25 *occurs:*

26 (1) *The board provides the eligible responsible party with a*
27 *letter of commitment pursuant to Chapter 6.75 (commencing with*
28 *Section 25299.10) that the party will receive reimbursement for the*
29 *corrective action.*

30 (2) *The responsible party requests in writing that the*
31 *suspension be terminated and that the work continue.*

32 (3) *The fund established pursuant to Article 6 (commencing*
33 *with Section 25299.50) of Chapter 6.75 is no longer in existence.*

34 (c) *The board shall adopt regulations pursuant to Section*
35 *25299.3 that specify the conditions under which a site is an*
36 *imminent threat to public health or safety or to the environment or*
37 *poses a substantial probability of causing a condition of*
38 *contamination, nuisance, or pollution as specified in paragraph*
39 *(2) of subdivision (a). The board shall not suspend corrective*
40 *action or investigation work at any site pursuant to this section*

1 until the effective date of the regulations adopted by the board
2 pursuant to this subdivision.

3 SEC. 19. Section 25296.30 is added to the Health and Safety
4 Code, to read:

5 25296.30. (a) The board, in consultation with the State
6 Department of Health Services, shall develop guidelines for the
7 investigation and cleanup of methyl tertiary butyl ether (MTBE)
8 and other ether-based oxygenates in groundwater. The guidelines
9 shall include procedures for determining, to the extent practicable,
10 whether the contamination associated with an unauthorized
11 release of MTBE is from the tank system prior to the system's most
12 recent upgrade or replacement or if the contamination is from an
13 unauthorized release from the current tank system.

14 (b) The board, in consultation with the State Department of
15 Health Services, shall develop appropriate cleanup standards for
16 contamination associated with a release of methyl tertiary butyl
17 ether.

18 SEC. 20. Section 25296.35 is added to the Health and Safety
19 Code, to read:

20 25296.35. (a) The board shall develop, implement, and
21 maintain a system for storing and retrieving data from cases
22 involving discharges of petroleum from underground storage tanks
23 to allow regulatory agencies and the general public to use
24 historical data in making decisions regarding permitting, land use,
25 and other matters. The system shall be accessible to government
26 agencies and the general public. A site included in the data system
27 shall be clearly designated as having no residual contamination if,
28 at the time the site is closed or at any time after closure, the board
29 determines that no residual contamination remains on the site.

30 (b) For purposes of this section, "residual contamination"
31 means the petroleum that remains on a site after a corrective action
32 has been carried out and the cleanup levels established by the
33 corrective action plan for the site, pursuant to subdivision (g) of
34 Section 2725 of Title 23 of the California Code of Regulations,
35 have been achieved.

36 SEC. 21. Section 25296.40 is added to the Health and Safety
37 Code, to read:

38 25296.40. (a) (1) Any owner or operator, or other
39 responsible party who has a tank case and who believes that the
40 corrective action plan for the site has been satisfactorily

1 *implemented, but where closure has not been granted, may petition*
2 *the board for a review of the case.*

3 *(2) Upon receipt of a petition pursuant to paragraph (1), the*
4 *board may close the tank case or require closure, if the tank case*
5 *is at a site under the jurisdiction of a regional board or a local*
6 *agency that is implementing a local oversight program under*
7 *Section 25297.1 and if the board determines that corrective action*
8 *at the site is in compliance with all of the requirements of*
9 *subdivisions (a) and (b) of Section 25296.10 and the corrective*
10 *action regulations adopted pursuant to Section 25299.3. If a tank*
11 *case is at a site under the jurisdiction of a local agency that is not*
12 *implementing a local oversight program pursuant to Section*
13 *25297.1, the board may recommend to the local agency that the*
14 *tank case be closed.*

15 *(b) Any aggrieved person may, not later than 30 days from the*
16 *date of final action by the board, pursuant to subdivision (a), file*
17 *with the superior court a petition for writ of mandate for review of*
18 *the decision. If the aggrieved person does not file a petition for writ*
19 *of mandate within the time provided by this subdivision, a board*
20 *decision shall not be subject to review by any court. Section 1094.5*
21 *of the Code of Civil Procedure shall govern proceedings for which*
22 *petitions are filed pursuant to this subdivision. For purposes of*
23 *subdivision (c) of Section 1094.5 of the Code of Civil Procedures,*
24 *the court shall uphold the decision if the decision is based upon*
25 *substantial evidence in light of the whole record.*

26 *(c) The authority provided under this section does not limit a*
27 *person's ability to petition the board for review under any other*
28 *state law.*

29 *SEC. 22. Section 25297.1 of the Health and Safety Code is*
30 *amended to read:*

31 *25297.1. (a) In addition to the authority granted to the board*
32 *pursuant to Division 7 (commencing with Section 13000) of the*
33 *Water Code and to the department pursuant to Chapter 6.8*
34 *(commencing with Section 25300), the board, in cooperation with*
35 *the department, shall develop and implement a local oversight*
36 *program for the abatement of, and oversight of the abatement of,*
37 *unauthorized releases of hazardous substances from underground*
38 *storage tanks by local agencies. In implementing the local*
39 *oversight program, the agreement specified in subdivision (b)*
40 *shall be between the board and the local agency. The board shall*

1 select local agencies for participation in the program from among
 2 those local agencies which apply to the board, giving first priority
 3 to those local agencies which have demonstrated prior experience
 4 in cleanup, abatement, or other actions necessary to remedy the
 5 effects of unauthorized releases of hazardous substances from
 6 underground storage tanks. The board shall select only those local
 7 agencies which have implemented this chapter and ~~which~~ *that*,
 8 except as provided in Section 25404.5, have begun to collect and
 9 transmit to the board the surcharge or fees pursuant to subdivision
 10 (b) of Section 25287.

11 (b) In implementing the local oversight program described in
 12 subdivision (a), the board may enter into an agreement with any
 13 local agency to perform, or cause to be performed, any cleanup,
 14 abatement, or other action necessary to remedy the effects of a
 15 release of hazardous substances from an underground storage tank
 16 with respect to which the local agency has enforcement authority
 17 pursuant to this section. The board ~~shall~~ *may* not enter into an
 18 agreement with a local agency for soil contamination cleanup or
 19 for groundwater contamination cleanup unless the board
 20 determines that the local agency has a demonstrated capability to
 21 oversee or perform the cleanup. The implementation of the
 22 cleanup, abatement, or other action shall be consistent with
 23 procedures adopted by the board pursuant to subdivision (d) and
 24 shall be based upon cleanup standards specified by the board or
 25 regional board.

26 (c) The board shall provide funding to a local agency ~~which~~
 27 *that* enters into an agreement pursuant to subdivision (b) for the
 28 reasonable costs incurred by the local agency in overseeing any
 29 cleanup, abatement, or other action taken by a responsible party to
 30 remedy the effects of unauthorized releases from underground
 31 storage tanks.

32 (d) The board shall adopt administrative and technical
 33 procedures, as part of the state policy for water quality control
 34 adopted pursuant to Section 13140 of the Water Code, for cleanup
 35 and abatement actions taken pursuant to this section. The
 36 procedures shall include, but not be limited to, all of the following:

37 (1) Guidelines as to which sites may be assigned to the local
 38 agency.

39 (2) The content of the agreements which may be entered into
 40 by the board and the local agency.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to *subdivision (d) of Section 25299.37* 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a data base for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency ~~which~~ *that* enters into an agreement pursuant to subdivision (b), shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken

pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency, which enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by technical program staff of a local agency and their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

1 (4) (A) The total amount of oversight costs for which a local
2 agency may be reimbursed shall not exceed one hundred fifteen
3 dollars (\$115) per hour, multiplied by the total number of
4 site-specific hours performed by the local agency.

5 (B) The total amount of the costs per site for administration and
6 technical assistance to local agencies by the board and the regional
7 board entering into agreements pursuant to subdivision (b) shall
8 not exceed a combined total of thirty-five dollars (\$35) for each
9 hour of site-specific oversight. The board shall base its costs on the
10 total hours of site-specific oversight work performed by all
11 participating local agencies. The regional board shall base its costs
12 on the total number of hours of site-specific oversight costs
13 attributable to the local agency which received regional board
14 assistance.

15 (C) The amounts specified in subparagraphs (A) and (B) are
16 base rates for the 1990–91 fiscal year. Commencing July 1, 1991,
17 and for each fiscal year thereafter, the board shall adjust the base
18 rates annually to reflect increases or decreases in the cost of living
19 during the prior fiscal year, as measured by the implicit price
20 deflator for state and local government purchases of goods and
21 services, as published by the United States Department of
22 Commerce or by a successor agency of the federal government.

23 (5) In recovering costs from responsible parties for costs
24 incurred under this section, the local agency shall prorate any costs
25 identifiable as startup costs over the expected number of cases
26 which the local agency will oversee during a 10-year period. A
27 responsible party who has been assessed startup costs for the
28 cleanup of any unauthorized release ~~which~~ *that*, as of January 1,
29 1991, is the subject of oversight by a local agency, shall receive an
30 adjustment by the local agency in the form of a credit, for the
31 purposes of cost recovery. Startup costs include all of the
32 following expenses:

33 (A) Small tools, safety clothing, cameras, sampling equipment,
34 and other similar articles necessary to investigate or document
35 pollution.

36 (B) Office furniture.

37 (C) Staff assistance needed to develop computer tracking of
38 financial and site-specific records.

39 (D) Training and setup costs for the first six months of the local
40 agency program.

(6) This subdivision does not apply to costs ~~which~~ *that* are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

SEC. 23. Section 25299 of the Health and Safety Code is amended to read:

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars (\$500) or more than five thousand dollars (\$5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

1 (4) Knowing failure to take reasonable and necessary steps to
2 assure compliance with this chapter by the operator of an
3 underground tank system.

4 (5) Violation of any applicable requirement of the permit
5 issued for operation of the underground tank system.

6 (6) Violation of any applicable requirement of this chapter or
7 any regulation adopted by the board pursuant to Section 25299.3.

8 (7) Failure to permit inspection or to perform any monitoring,
9 testing, or reporting required pursuant to Section 25288 or 25289.

10 (8) Making any false statement, representation, or certification
11 in any application, record, report, or other document submitted or
12 required to be maintained pursuant to this chapter.

13 (c) Any person who intentionally fails to notify the board or the
14 local agency when required to do so by this chapter or who submits
15 false information in a permit application, amendment, or renewal,
16 pursuant to Section 25286, is liable for a civil penalty of not more
17 than five thousand dollars (\$5,000) for each underground storage
18 tank for which notification is not given or false information is
19 submitted.

20 (d) *(1) Any person who violates any corrective action*
21 *requirement established by, or issued pursuant to, Section*
22 *25296.10 is liable for a civil penalty of not more than ten thousand*
23 *dollars (\$10,000) for each underground storage tank for each day*
24 *of violation.*

25 *(2) A civil penalty under this section may be imposed in a civil*
26 *action under this chapter, or may be administratively imposed by*
27 *the board or a regional board pursuant to Article 2.5 (commencing*
28 *with Section 13323) of Chapter 5 of Division 7 of the Water Code.*

29 *(e) Any person who violates Section 25292.3 is liable for a civil*
30 *penalty of not more than five thousand dollars (\$5,000) for each*
31 *underground storage tank for each day of violation.*

32 (f) (1) Any person who falsifies any monitoring records
33 required by this chapter, or knowingly fails to report an
34 unauthorized release, shall, upon conviction, be punished by a fine
35 of not less than five thousand dollars (\$5,000) or more than ten
36 thousand dollars (\$10,000), by imprisonment in the county jail for
37 not to exceed one year, or by both that fine and imprisonment.

38 (2) Any person who intentionally disables or tampers with an
39 automatic leak detection system in a manner that would prevent
40 the automatic leak detection system from detecting a leak or

1 alerting the owner or operator of the leak, shall, upon conviction,
2 be punished by a fine of not less than five thousand dollars
3 (\$5,000) or more than ten thousand dollars (\$10,000), by
4 imprisonment in the county jail for not more than one year, or by
5 both the fine and imprisonment.

6 ~~(e)~~—

7 (g) In determining both the civil and criminal penalties
8 imposed pursuant to this section, the *board, a regional board or the*
9 *court, as the case may be,* shall consider all relevant
10 circumstances, including, but not limited to, the extent of harm or
11 potential harm caused by the violation, the nature of the violation
12 and the period of time over which it occurred, the frequency of past
13 violations, and the corrective action, if any, taken by the person
14 who holds the permit.

15 ~~(f)~~—

16 (h) Each civil penalty or criminal fine imposed pursuant to this
17 section for any separate violation shall be separate, and in addition
18 to, any other civil penalty or criminal fine imposed pursuant to this
19 section or any other provision of law, ~~and except that no civil~~
20 ~~penalty shall be recovered under subdivision (d) for violations for~~
21 ~~which a civil penalty is recovered pursuant to Section 13268 or~~
22 ~~13350 of the Water Code. The penalty or fine shall be paid to the~~
23 ~~treasury of the local agency or state, whichever is represented by~~
24 ~~the office of the city attorney, district attorney, or Attorney General~~
25 ~~bringing the action. All penalties or fines collected by the board or~~
26 ~~a regional board or collected on behalf of the board or a regional~~
27 ~~board by the Attorney General shall be deposited in the State Water~~
28 ~~Pollution Cleanup and Abatement Account in the State Water~~
29 ~~Quality Control Fund, and are available for expenditure by the~~
30 ~~board, upon appropriation, pursuant to Section 13441 of the Water~~
31 ~~Code.~~

32 ~~(g)~~—

33 (i) Paragraph (9) of subdivision (a) does not prohibit the owner
34 or operator of an underground storage tank, or his or her designee,
35 from maintaining, repairing, or replacing automatic leak detection
36 devices or alarms associated with that tank.

37 SEC. 24. Section 25299.7 of the Health and Safety Code is
38 amended to read:

1 25299.7. (a) The board is designated as the lead agency in the
2 state for all purposes stated in the federal act and may exercise any
3 powers which a state may exercise pursuant to the federal act.

4 (b) The board may prepare, as part of any program application
5 submitted to the Environmental Protection Agency for state
6 program approval pursuant to Section 6991c of Title 42 of the
7 United States Code, any procedures and implementation plans
8 necessary to assure compliance with the requirements for a state
9 program implementing the federal act. These procedures and
10 implementation plans may include, but are not limited to,
11 procedures or implementation plans with respect to investigation,
12 compliance monitoring, enforcement, public participation, and
13 sharing of information among local agencies, the board, and the
14 Environmental Protection Agency. If the Environmental
15 Protection Agency approves of the state program, the board, the
16 regional boards, and each local agency shall administer this
17 chapter in accordance with these procedures and implementation
18 plans where required by the memorandum of agreement executed
19 by the board and the Environmental Protection Agency. These
20 procedures and implementation plans shall also apply to any
21 public agency or official who brings a civil enforcement action
22 pursuant to this chapter, and to any city or county specified in
23 Section 25299.1, to the extent required by the memorandum of
24 agreement. The board's approval of the program application and
25 memorandum of agreement is not subject to Chapter 3.5
26 (commencing with Section 11340) of Part 1 of Division 3 of Title
27 2 of the Government Code.

28 (c) The board shall adopt, *pursuant to Section 25299.3*, any
29 regulations necessary to obtain state program approval pursuant to
30 Section 6991c of Title 42 of the United States Code. The board
31 shall adopt these regulations as emergency regulations in
32 accordance with Chapter 3.5 (commencing with Section 11340) of
33 Part 1 of Division 3 of Title 2 of the Government Code, and for the
34 purposes of that chapter, including Section 11349.6 of the
35 Government Code, the adoption of these regulations is an
36 emergency and shall be considered by the Office of Administrative
37 Law as necessary for the immediate preservation of the public
38 peace, health and safety, and general welfare. Notwithstanding
39 Chapter 3.5 (commencing with Section 11340) of Part 1 of
40 Division 3 of Title 2 of the Government Code, any emergency

regulations adopted by the board ~~pursuant to~~ *in furtherance of* this section shall be filed with, but may not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the board.

SEC. 25. Section 25299.8 is added to the Health and Safety Code, to read:

25299.8. The repeal and addition of Section 25292.3 and the amendment of Section 25284 by the act adding this section during the 2002 portion of the 2001–02 Regular Session, to eliminate the requirement to acquire and display an upgrade compliance certificate, do not constitute a bar to any action, whether administrative, civil, or criminal, brought for a violation of the law that occurred prior to January 1, 2003.

SEC. 26. Section 25299.36 of the Health and Safety Code is amended to read:

25299.36. The board, a regional board, or a local agency may undertake or contract for corrective action *in response to an unauthorized release from an underground storage tank that is subject to this chapter*, pursuant to subdivision ~~(g) of Section 25299.37~~ *(f) of Section 25296.10* or if a situation exists ~~which that~~ requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

SEC. 27. Section 25299.37 of the Health and Safety Code is repealed.

~~25299.37. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this article and regulations adopted~~

1 pursuant to Section 25299.77. In adopting regulations pursuant to
2 Section 25299.77, the board shall develop corrective action
3 requirements for health hazards and protection of the
4 environment, based on the severity of the health hazards and the
5 other factors listed in subdivision (b).

6 (b) Any corrective action conducted pursuant to this chapter
7 shall ensure protection of human health, safety, and the
8 environment. The corrective action shall be consistent with any
9 applicable waste discharge requirements or other order issued
10 pursuant to Division 7 (commencing with Section 13000) of the
11 Water Code, all applicable state policies for water quality control
12 adopted pursuant to Article 3 (commencing with Section 13140)
13 of Chapter 3 of Division 7 of the Water Code, and all applicable
14 water quality control plans adopted pursuant to Section 13170 of
15 the Water Code and Article 3 (commencing with Section 13240)
16 of Chapter 4 of Division 7 of the Water Code.

17 (c) (1) When a local agency, the board, or a regional board
18 requires an owner, operator, or other responsible party to
19 undertake corrective action, including preliminary site assessment
20 and investigation, pursuant to an oral or written order, direction,
21 notification, or approval issued pursuant to this section, or
22 pursuant to a cleanup and abatement order or other oral or written
23 directive issued pursuant to Division 7 (commencing with Section
24 13000) of the Water Code, the owner, operator, or other
25 responsible party shall prepare a work plan that details the
26 corrective action the owner, operator, or other responsible party
27 shall take to comply with the requirements of subdivisions (a) and
28 (b) and the corrective action regulations adopted pursuant to
29 Section 25299.77.

30 (2) The work plan required by paragraph (1) shall be prepared
31 in accordance with the regulations adopted pursuant to Section
32 25299.77. The work plan shall include a schedule and timeline for
33 corrective action.

34 (3) At the request of the owner, operator, or other responsible
35 party, the local agency, the board, or the regional board shall
36 review a work plan prepared pursuant to paragraph (1) and either
37 accept the work plan, if it meets the requirements of this section,
38 or disapprove the work plan if it does not meet those requirements.
39 If the local agency, board, or the regional board accepts the work
40 plan, it shall indicate to the owner, operator, or other responsible

1 ~~party, the actions or other elements of the work plan that are, in all~~
2 ~~likelihood, adequate and necessary to meet the requirements of~~
3 ~~this section, and the actions and elements that may be unnecessary.~~
4 ~~If the local agency, board, or regional board disapproves the work~~
5 ~~plan, it shall state the reasons for the disapproval.~~

6 ~~(4) In the interests of minimizing environmental contamination~~
7 ~~and promoting prompt cleanup, the responsible party may begin~~
8 ~~implementation of the proposed actions after the work plan has~~
9 ~~been submitted but before the work plan has received regulatory~~
10 ~~agency acceptance, except that implementation of the work plan~~
11 ~~may not begin until 60 calendar days from the date of submittal,~~
12 ~~unless the responsible party is otherwise directed in writing by the~~
13 ~~regulatory agency. However, before beginning implementation~~
14 ~~pursuant to this paragraph, the responsible party shall notify the~~
15 ~~regulatory agency of the intent to initiate proposed actions set forth~~
16 ~~in the submitted work plan.~~

17 ~~(5) The owner, operator, or other responsible party shall~~
18 ~~conduct corrective actions in accordance with the work plan~~
19 ~~approved pursuant to the section.~~

20 ~~(6) (A) The local agency, the board, or the regional board shall~~
21 ~~advise and work with the owner, operator, or other responsible~~
22 ~~party on the opportunity to seek preapproval of corrective action~~
23 ~~costs pursuant to Section 2811.4 of Title 23 of the California Code~~
24 ~~of Regulations or any successor regulation. Regional board staff~~
25 ~~and local agency staff shall work with the responsible party and~~
26 ~~fund staff to obtain preapproval for the responsible party. The fund~~
27 ~~staff shall grant or deny a request for preapproval within 30~~
28 ~~calendar days after the date a request is received. If fund staff~~
29 ~~denies a request for preapproval or fails to act within 30 calendar~~
30 ~~days after receiving the request, an owner, operator, or other~~
31 ~~responsible party who has prepared a work plan that has been~~
32 ~~reviewed and accepted pursuant to paragraph (3), and is denied~~
33 ~~preapproval of corrective action costs for one or more of the~~
34 ~~actions required by the work plan, may petition the board for~~
35 ~~review of the request for preapproval. The board shall review the~~
36 ~~petition pursuant to Section 25299.56, and for that purpose the~~
37 ~~petition for review of a request for preapproval of corrective action~~
38 ~~costs shall be reviewed by the board in the same manner as a~~
39 ~~petition for review of an unpaid claim.~~

~~(B) If the board receives a petition for review pursuant to subparagraph (A), the board shall review the request for preapproval and grant or deny the request pursuant to this subparagraph and subparagraph (C). The board shall deny the request for preapproval if the board makes one of the following findings:~~

~~(i) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).~~

~~(ii) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.~~

~~(iii) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.~~

~~(C) If the board does not deny the request for preapproval pursuant to subparagraph (B), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproved amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:~~

~~(i) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.~~

~~(ii) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.77.~~

~~(7) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this article, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.~~

1 ~~(d) Notwithstanding Section 25297.1, the board shall~~
2 ~~implement a procedure that does not assess an owner, operator, or~~
3 ~~responsible party taking corrective action pursuant to this chapter~~
4 ~~for the costs of a local oversight program pursuant to paragraph (4)~~
5 ~~of subdivision (d) of Section 25297.1. The board shall institute an~~
6 ~~internal procedure for assessing, reviewing, and paying those costs~~
7 ~~directly between the board and the local agency. At least 15 days~~
8 ~~before the board proposes to disapprove the reimbursement of~~
9 ~~corrective action costs which have been incurred on the grounds~~
10 ~~that the costs were unreasonable or unnecessary, the board shall~~
11 ~~issue a notice advising the claimant and the lead agency of the~~
12 ~~proposed disallowance, to allow review and comment.~~

13 ~~(e) A person to whom an order is issued pursuant to subdivision~~
14 ~~(e), shall have the same rights of administrative and judicial appeal~~
15 ~~and review as are provided by law for cleanup and abatement~~
16 ~~orders issued pursuant to Section 13304 of the Water Code.~~

17 ~~(f) Until the board adopts regulations pursuant to Section~~
18 ~~25299.77, the owner, operator, or other responsible party shall take~~
19 ~~corrective action in accordance with Chapter 6.7 (commencing~~
20 ~~with Section 25280) and the federal act.~~

21 ~~(g) If a person to whom an order is issued pursuant to~~
22 ~~subdivision (e) does not comply with the order, the board, a~~
23 ~~regional board, or the local agency may undertake or contract for~~
24 ~~corrective action and recover costs pursuant to Section 25299.70.~~

25 ~~(h) The following uniform closure letter shall be issued to the~~
26 ~~owner, operator or other responsible party taking corrective action~~
27 ~~at an underground storage tank site by the local agency or the~~
28 ~~regional board with jurisdiction over the site, or the board, upon~~
29 ~~a finding that the underground storage tank site is in compliance~~
30 ~~with the requirements of subdivisions (a) and (b) and with any~~
31 ~~corrective action regulations adopted pursuant to Section~~
32 ~~25299.77 and that no further corrective action is required at the~~
33 ~~site:~~

34
35 ~~“[Case File Number]~~

36 ~~—Dear [Responsible Party]:~~

1 ~~—This letter confirms the completion of a site investigation and~~
2 ~~corrective action for the underground storage tank(s) formerly~~
3 ~~located at the above-described location. Thank you for your~~
4 ~~cooperation throughout this investigation. Your willingness~~
5 ~~and promptness in responding to our inquiries concerning the~~
6 ~~former underground storage tank(s) are greatly appreciated.~~

7
8 ~~—Based on information in the above-referenced file and with~~
9 ~~the provision that the information provided to this agency was~~
10 ~~accurate and representative of site conditions, this agency finds~~
11 ~~that the site investigation and corrective action carried out at~~
12 ~~your underground storage tank(s) site is in compliance with the~~
13 ~~requirements of subdivisions (a) and (b) of Section 25299.37 of~~
14 ~~the Health and Safety Code and with corrective action~~
15 ~~regulations adopted pursuant to Section 25299.77 of the Health~~
16 ~~and Safety Code and that no further action related to the~~
17 ~~petroleum release(s) at the site is required.~~

18
19 ~~—This notice is issued pursuant to subdivision (h) of Section~~
20 ~~25299.37 of the Health and Safety Code.~~

21
22 ~~—Please contact our office if you have any questions regarding~~
23 ~~this matter.~~

24
25 Sincerely,

26
27
28 [Name of Board Executive Director, Regional Board Executive
29 Officer, or Local Agency Director]"

30
31 SEC. 28. Section 25299.37.1 of the Health and Safety Code
32 is repealed.

33 ~~25299.37.1. (a) No closure letter pursuant to this chapter~~
34 ~~shall be issued unless the soil or groundwater, or both, where~~
35 ~~applicable, at the site have been tested for MTBE and the results~~
36 ~~of that testing are known to the regional board.~~

37 ~~(b) Subdivision (a) does not apply to a closure letter for a tank~~
38 ~~case for which the board, a regional board, or local agency~~
39 ~~determines that the tank has only contained diesel or jet fuel.~~

SEC. 29. Section 25299.37.2 of the Health and Safety Code is repealed.

~~25299.37.2. (a) The local agency, the board, or a regional board shall not consider corrective action or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further corrective action is required with respect to a site upon which there was an unauthorized release of petroleum from an underground storage tank subject to this chapter unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the local agency, board, or regional board.~~

~~(b) The local agency, board, or regional board shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.~~

SEC. 30. Section 25299.38 is added to the Health and Safety Code, to read:

25299.38. (a) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3) of subdivision (c) of Section 25296.10, and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

1 (b) If the board receives a petition for review pursuant to
2 subdivision (a), the board shall review the request for preapproval
3 and grant or deny the request pursuant to this subdivision and
4 subdivision (c). The board shall deny the request for preapproval
5 if the board makes one of the following findings:

6 (1) The petitioner is not eligible to file a claim pursuant to
7 Article 6 (commencing with Section 25299.50).

8 (2) The petitioner failed to submit one or more of the documents
9 required by the regulations adopted by the board governing
10 preapproval.

11 (3) The petitioner failed to obtain three bids or estimates for
12 corrective action costs and, under the circumstances pertaining to
13 the corrective action, there is no valid reason to waive the three-bid
14 requirement pursuant to the regulations adopted by the board.

15 (c) If the board does not deny the request for preapproval
16 pursuant to subdivision (b), the board shall grant the request for
17 preapproval. However, the board may modify the request by
18 denying preapproval of corrective action costs or reducing the
19 preapproval amount of those costs for any action required by the
20 work plan, if the board finds that the fund staff has demonstrated
21 either of the following:

22 (1) The amount of corrective action reimbursement requested
23 for the action is not reasonable. In determining if the fund staff has
24 demonstrated that the amount of reimbursement requested for an
25 action is not reasonable, the board shall use, when available,
26 recent experience with bids or estimates for similar actions.

27 (2) The action required in the work plan is, in all likelihood, not
28 necessary for the corrective action to comply with the requirements
29 of subdivisions (a) and (b) of Section 25296.10 and the corrective
30 action regulations adopted pursuant to Section 25299.3.

31 SEC. 31. Section 25299.38.1 of the Health and Safety Code is
32 repealed.

33 ~~25299.38.1. (a) The board, in consultation with the State~~
34 ~~Department of Health Services, shall develop guidelines for the~~
35 ~~investigation and cleanup of MTBE and other ether-based~~
36 ~~oxygenates in groundwater. The guidelines shall include~~
37 ~~procedures for determining, to the extent practicable, whether the~~
38 ~~contamination associated with an unauthorized release of MTBE~~
39 ~~is from the tank system prior to the system's most recent upgrade~~

1 ~~or replacement or if the contamination is from an unauthorized~~
2 ~~release from the current tank system.~~

3 ~~(b) The board, in consultation with the State Department of~~
4 ~~Health Services, shall develop appropriate cleanup standards for~~
5 ~~contamination associated with a release of MTBE.~~

6 *SEC. 32. Section 25299.39 of the Health and Safety Code is*
7 *repealed.*

8 ~~25299.39. (a) (1) Unless the board, in consultation with~~
9 ~~local agencies and the regional board determines that a site is an~~
10 ~~emergency site, the board, at the request of an eligible responsible~~
11 ~~party, may suspend additional corrective action or investigation~~
12 ~~work at a site, based on a preliminary site assessment conducted~~
13 ~~in accordance with the regulations adopted by the board~~
14 ~~implementing Section 25299.37, but the board shall not suspend~~
15 ~~any of the following activities pursuant to this section:~~

16 ~~(A) Removal of, or approved modifications of, existing tanks.~~

17 ~~(B) Excavation of petroleum saturated soil or removal of~~
18 ~~excess petroleum from saturated soil.~~

19 ~~(C) Removal of free product from the saturated and unsaturated~~
20 ~~zones.~~

21 ~~(D) Periodic monitoring to ensure that released petroleum is~~
22 ~~not migrating in an uncontrolled manner that will cause the site to~~
23 ~~become an emergency site.~~

24 ~~(2) For purposes of this subdivision, "emergency site" means~~
25 ~~a site that, because of an unauthorized release of petroleum, meets~~
26 ~~one of the following conditions:~~

27 ~~(A) The site presents an imminent threat to public health or~~
28 ~~safety or the environment.~~

29 ~~(B) The site poses a substantial probability of causing a~~
30 ~~condition of contamination or nuisance, as defined in Section~~
31 ~~13050 of the Water Code, or of causing pollution of a source of~~
32 ~~drinking water at a level that is a violation of a primary or~~
33 ~~secondary drinking water standard adopted by the State~~
34 ~~Department of Health Services pursuant to Chapter 4~~
35 ~~(commencing with Section 116270) of Part 12 of Division 104.~~

36 ~~(b) The suspension shall continue until one of the following~~
37 ~~occurs:~~

38 ~~(1) The board provides the eligible responsible party with a~~
39 ~~letter of commitment that the party will receive reimbursement for~~
40 ~~the corrective action.~~

~~(2) The responsible party requests in writing that the suspension be terminated and that the work continue.~~

~~(3) The fund is no longer in existence.~~

~~(e) The board shall adopt regulations that specify the conditions under which a site is an imminent threat to public health or safety or to the environment or poses a substantial probability of causing a condition of contamination, nuisance, or pollution as specified in paragraph (2) of subdivision (a). The board shall not suspend corrective action or investigation work at any site pursuant to this section until the effective date of the regulations adopted by the board pursuant to this subdivision.~~

SEC. 33. Section 25299.39.1 of the Health and Safety Code is repealed.

~~25299.39.1. (a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public. A site included in the data system shall be clearly designated as having no residual contamination if, at the time the site is closed or at any time after closure, the board determines that no residual contamination remains on the site.~~

~~(b) For purposes of this section, "residual contamination" means the petroleum that remains on a site after a corrective action has been carried out and the cleanup levels established by the corrective action plan for the site, pursuant to subdivision (g) of Section 2725 of Title 23 of the California Code of Regulations, have been achieved.~~

SEC. 34. Section 25299.39.2 of the Health and Safety Code is amended to read:

~~25299.39.2. (a) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close the tank case or require the closure of a tank case at a site under the jurisdiction of a regional~~

board or a local agency implementing a local oversight program under Section 25297.1 if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section ~~25299.37~~ 25296.10 and the corrective action regulations adopted pursuant to Section ~~25299.77~~ 25299.3. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program under Section 25297.1, the board may recommend to the local agency that the case be closed.

(b) ~~(1) Any owner, operator, or other responsible party who has a tank case and who believes that the corrective action plan for the site has been satisfactorily implemented, but where closure has not been granted, may petition the board for a review of the case, whether or not the petitioner is eligible for reimbursement from the fund pursuant to Section 25299.54.~~

~~(2) Upon receipt of a petition pursuant to paragraph (1), the board may close the tank case or require closure, if the tank case is at a site under the jurisdiction of a regional board or a local agency that is implementing a local oversight program under Section 25297.1 and if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25299.37 and the corrective action regulations adopted pursuant to Section 25299.77. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program pursuant to Section 25297.1, the board may recommend to the local agency that the tank case be closed. Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subdivision (a) or (b), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.~~

~~(d)~~

1 (c) The authority provided under this section does not limit a
2 person's ability to petition the board for review under any other
3 state law.

4 *SEC. 35. Section 25299.39.3 of the Health and Safety Code is*
5 *amended to read:*

6 25299.39.3. The board, a regional board, or local agency shall
7 be permitted reasonable access to property owned or possessed by
8 an owner, operator, or responsible party as necessary to perform
9 corrective action pursuant to ~~Sections~~ Section 25299.36 and
10 ~~25299.37~~. The access shall be obtained with the consent of the
11 owner or possessor of the property or, if the consent is withheld,
12 with a warrant duly issued pursuant to the procedure described in
13 Title 13 (commencing with Section 1822.50) of Part 3 of the Code
14 of Civil Procedure. However, in the event of an emergency
15 affecting public health or safety, or the environment, the board, a
16 regional board, or local agency may enter the property without
17 consent or the issuance of a warrant.

18 *SEC. 36. Section 25299.50.1 of the Health and Safety Code is*
19 *amended to read:*

20 25299.50.1. (a) For purposes of this section, "fire safety
21 agency" means a city fire department, county fire department, city
22 and county fire department, fire protection district, a joint powers
23 authority formed for the purpose of providing fire protection
24 services, or any other local agency that normally provides fire
25 protection services.

26 (b) The Fire Safety Subaccount is hereby created in the
27 Underground Storage Tank Cleanup Fund, for expenditure by the
28 board to pay a claim described in paragraph (4) of subdivision (b)
29 of Section 25299.52 that was filed before January 1, 2000, by a fire
30 safety agency. Except as provided in subdivision (d), the board
31 shall pay such a claim filed by a fire safety agency only from funds
32 appropriated from the Fire Safety Subaccount.

33 (c) The sum of five million dollars (\$5,000,000) of the moneys
34 in the fund derived from the sources described in paragraphs (1)
35 to (4), inclusive, of subdivision (b) of Section 25299.50 is hereby
36 transferred from the fund to the Fire Safety Subaccount, and
37 appropriated therefrom to the board, for expenditure pursuant to
38 this section for a claim filed by a fire safety agency specified in
39 subdivision (b).

(d) The unpaid amount of any claim filed by a fire safety agency specified in subdivision (b), for which a closure letter has not been issued pursuant to subdivision ~~(h) of Section 25299.37~~ (g) of Section 25296.10 on or before January 1, 2006, shall not be payable from the Fire Safety Subaccount but shall revert to the priority ranking for claims specified in Section 25299.52.

(e) The payment of claims pursuant to this section shall not affect the board's payment of claims filed pursuant to paragraph (1), (2), or (3) of subdivision (b) of Section 25299.52.

(f) Any funds remaining in the Fire Safety Subaccount on January 1, 2006, shall be transferred to the fund.

(g) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 37. Section 25299.51 of the Health and Safety Code is amended to read:

25299.51. The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for ~~expenditure by the board for the costs of implementing this chapter, which shall include costs incurred by the board pursuant to Article 8.5 (commencing with Section 25299.80.1) and for implementing Section 25296.10 for a tank that is subject to this chapter.~~

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million five hundred thousand dollars (\$1,500,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision ~~(g)~~ (f) of Section ~~25299.37~~ 25296.10, in response to an unauthorized release from an underground storage tank subject to this chapter.

(i) To pay claims pursuant to Section 25299.58.

SEC. 38. *Section 25299.53 of the Health and Safety Code is amended to read:*

25299.53. (a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision ~~(g)~~ (f) of Section ~~25299.37~~ 25296.10 in response to an unauthorized release from an underground storage tank subject to this chapter shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section ~~25299.37~~ 25296.10, the regional board or local agency shall not initiate a corrective action pursuant to this chapter or Chapter 6.7 (commencing with Section 25280).

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in

subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section ~~25299.37~~ 25296.10 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

SEC. 39. Section 25299.54 of the Health and Safety Code is amended to read:

25299.54. (a) Except as provided in subdivisions (b), (c), (d), (e), ~~and~~ (g), and (h), an owner or operator, required to perform corrective action pursuant to Section ~~25299.37~~ 25296.10, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) Any owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30,

1 1988, to come into compliance with waste discharge requirements
2 or other orders issued pursuant to Division 7 (commencing with
3 Section 13000) of the Water Code concerning the release.

4 (d) An owner or operator who violates ~~Article 4 (commencing~~
5 ~~with Section 25299.36)~~ *Section 25296.10 or any corrective action*
6 *order, directive, notification, or approval order issued pursuant to*
7 *this chapter, Chapter 6.7 (commencing with Section 25280), or*
8 *Division 7 (commencing with Section 13000) of the Water Code,*
9 is liable for any corrective action costs that result from the owner's
10 or operator's violation of ~~Article 4 (commencing with Section~~
11 ~~25299.36)~~ and is ineligible to file a claim pursuant to this section.

12 (e) Notwithstanding this chapter, a person who owns a tank
13 located underground that is used to store petroleum may apply to
14 the board for satisfaction of a claim, and the board may pay the
15 claim pursuant to Section 25299.57 without making the findings
16 specified in paragraph (3) of subdivision (d) of Section 25299.57
17 if all of the following apply:

18 (1) The tank meets one of the following requirements:

19 (A) The tank is located at the residence of a person on property
20 used exclusively for residential purposes at the time of discovery
21 of the unauthorized release of petroleum.

22 (B) The tank owner demonstrates that the tank is located on
23 property ~~which~~ *that*, on and after January 1, 1985, is not used for
24 agricultural purposes, the tank is of a type specified in
25 subparagraph (B) of paragraph (1) of subdivision ~~(x)~~ (y) of Section
26 25281, and the petroleum in the tank is used solely for the purposes
27 specified in subparagraph (B) of paragraph (1) of subdivision ~~(x)~~
28 (y) of Section 25281 on and after January 1, 1985.

29 (2) The tank is not a tank described in subparagraph (A) of
30 paragraph (1) of subdivision ~~(x)~~ (y) of Section 25281 and the tank
31 is not used on or after January 1, 1985, for the purposes specified
32 in that subparagraph.

33 (3) The claimant has complied with Section 25299.31 and the
34 permit requirements of Chapter 6.7 (commencing with Section
35 25280), or the claimant is not subject to the requirements of those
36 provisions.

37 (f) Whenever the board has authorized the prepayment of a
38 claim pursuant to Section 25299.57, and the amount of money
39 available in the fund is insufficient to pay the claim, the owner or

operator shall remain obligated to undertake the corrective action in accordance with Section ~~25299.37~~ 25296.10.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant to an insurance contract and either of the following apply:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) *(1) Except as provided in paragraph (2), a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated shall not be reimbursed by the board for a cost attributable to an occurrence that commenced prior to the acquisition of the real property if both of the following conditions apply:*

(A) The purchaser or acquirer knew, or in the exercise of reasonable diligence would have discovered, that an underground storage tank or tank specified in subdivision (e) was located on the real property being acquired.

(B) Any person who owned the site or owned or operated an underground storage tank or tank specified in subdivision (e) at the site during or after the occurrence and prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the fund.

(2) Notwithstanding paragraph (1), if the claim is filed on or after January 1, 2003, the board may reimburse the eligible costs claimed by a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated, if all of the following conditions apply:

(A) The claimant is the owner or operator of the tank that had an occurrence that commenced prior to the owner's acquisition of the real property.

(B) The claimant satisfies all eligibility requirements, other than those specified in paragraph (1).

(C) The claimant is not an affiliate of any person whose act or omission caused or would cause ineligibility for the fund.

(3) If the board reimburses a claim pursuant to paragraph (2), any person specified in subparagraph (B) of paragraph (1), other than a person who is ineligible for reimbursement from the fund solely because the property was acquired from another person who was ineligible for reimbursement from the fund, shall be liable for the amount paid from the fund. The Attorney General, upon request of the board, shall bring a civil action to recover the liability imposed under this paragraph. All money recovered by the Attorney General under this paragraph shall be deposited in the fund.

(4) The liability established pursuant to paragraph (3) does not limit or supersede liability under any other provision of state or federal law, including common law.

(5) For purposes of this subdivision, the following definitions shall apply:

(A) "Affiliate" means a person who has one or more of the following relationships with another person:

(i) Familial relationship.

(ii) Fiduciary relationship.

(iii) A relationship of direct or indirect control or shared interests.

(B) Affiliates include, but are not limited to, any of the following:

(i) Parent corporation and subsidiary.

(ii) Subsidiaries that are owned by the same parent corporation.

(iii) *Business entities involved in a reorganization, as defined in Section 181 of the Corporations Code.*

(iv) *Corporate officer and corporation.*

(v) *Shareholder that owns a controlling block of voting stock and the corporation.*

(vi) *Partner and the partnership.*

(vii) *Member and a limited liability company.*

(viii) *Franchiser and franchisee.*

(ix) *Settlor, trustee, and beneficiary of a trust.*

(x) *Debtor and bankruptcy trustee or debtor-in-possession.*

(xi) *Principal and agent.*

(C) *“Familial relationship” means relationships between family members, including, and limited to, a husband, wife, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.*

(i) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 is declaratory of existing law.

~~(i)~~

(j) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by ~~the act amending this section during the 1999–2000 Regular Session Chapter 328 of the Statutes of 1999~~ is declaratory of existing law.

SEC. 40. *Section 25299.55 of the Health and Safety Code is amended to read:*

25299.55. The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 ~~which~~ *that* shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant’s knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section ~~25299.37~~ 25296.10.

1 (c) Certification by the claimant of all costs ~~which~~ *that* have
2 been, or will be, incurred in undertaking corrective action after
3 January 1, 1988.

4 *SEC. 41. Section 25299.57 of the Health and Safety Code is*
5 *amended to read:*

6 25299.57. (a) If the board makes the determination specified
7 in subdivision (d), the board may only pay for the costs of a
8 corrective action that exceeds the level of financial responsibility
9 required to be obtained pursuant to Section 25299.32, but not more
10 than one million five hundred thousand dollars (\$1,500,000) for
11 each occurrence. In the case of an owner or operator who, as of
12 January 1, 1988, was required to perform corrective action, who
13 initiated that corrective action in accordance with Division 7
14 (commencing with Section 13000) of the Water Code or Chapter
15 6.7 (commencing with Section 25280), and who is undertaking the
16 corrective action in compliance with waste discharge
17 requirements or other orders issued pursuant to Division 7
18 (commencing with Section 13000) of the Water Code or Chapter
19 6.7 (commencing with Section 25280), the owner or operator may
20 apply to the board for satisfaction of a claim filed pursuant to this
21 article. ~~It is the intent of the Legislature that~~ *The board shall notify*
22 *claimants applying for satisfaction of claims from the fund be*
23 ~~notified~~ *of eligibility for reimbursement in a prompt and timely*
24 *manner and that a letter of credit or commitment that will obligate*
25 *funds for reimbursement shall follow the notice of eligibility as*
26 *soon thereafter as possible.*

27 (b) (1) For claims eligible for reimbursement pursuant to
28 subdivision (c) of Section 25299.55, the claimant shall submit the
29 actual cost of corrective action to the board, which shall either
30 approve or disapprove the costs incurred as reasonable and
31 necessary. *At least 15 days before the board proposes to disapprove*
32 *the reimbursement of corrective action costs that have been*
33 *incurred on the grounds that the costs were unreasonable or*
34 *unnecessary, the board shall issue a notice advising the claimant*
35 *and the lead agency of the proposed disallowance, to allow review*
36 *and comment.*

37 (2) The board shall not reject any actual costs of corrective
38 action in a claim solely on the basis that the invoices submitted fail
39 to sufficiently detail the actual costs incurred, if all of the
40 following applies:

1 (A) Auxiliary documentation is provided ~~which~~ *that*
2 documents to the board's satisfaction that the invoice is for
3 necessary corrective action work.

4 (B) The costs of corrective action work in the claim are
5 reasonably commensurate with similar corrective action work
6 performed during the same time period covered by the invoice for
7 which reimbursement is sought.

8 (C) The invoices include a brief description of the work
9 performed, the date that the work was performed, the vendor, and
10 the amount.

11 (c) For claims eligible for prepayment pursuant to subdivision
12 (c) of Section 25299.55, the claimant shall submit the estimated
13 cost of the corrective action to the board, which shall approve or
14 disapprove the reasonableness of the cost estimate.

15 (d) Except as provided in subdivision (j), a claim specified in
16 subdivision (a) may be paid if the board makes all of the following
17 findings:

18 (1) There has been an unauthorized release of petroleum into
19 the environment from an underground storage tank.

20 (2) The claimant is required to undertake or contract for
21 corrective action pursuant to Section ~~25299.37~~ 25296.10, or, as of
22 January 1, 1988, the claimant has initiated corrective action in
23 accordance with Division 7 (commencing with Section 13000) of
24 the Water Code.

25 (3) (A) Except as provided in subparagraph (B), the claimant
26 has complied with Section 25299.31 and the permit requirements
27 of Chapter 6.7 (commencing with Section 25280).

28 (B) All claimants who file their claim on or after January 1,
29 1994, and all claimants who filed their claim prior to that date but
30 are not eligible for a waiver of the permit requirement pursuant to
31 board regulations in effect on the date of the filing of the claim, and
32 who did not obtain or apply for any permit required by subdivision
33 (a) of Section 25284 by January 1, 1990, shall be subject to
34 subparagraph (A) regardless of the reason or reasons that the
35 permit was not obtained or applied for. However, on and after
36 January 1, 1994, the board may waive the provisions of
37 subparagraph (A) as a condition for payment from the fund if the
38 board finds all of the following:

1 (i) The claimant was unaware of the permit requirement prior
2 to January 1, 1990, and there was no intent to intentionally avoid
3 the permit requirement or the fees associated with the permit.

4 (ii) Prior to submittal of the application to the fund, the
5 claimant has complied with Section 25299.31 and has obtained
6 and paid for all permits currently required by this paragraph.

7 (iii) Prior to submittal of the application to the fund, the
8 claimant has paid all fees, interest, and penalties imposed pursuant
9 to Article 5 (commencing with Section 25299.40) and Part 26
10 (commencing with Section 50101) of Division 2 of the Revenue
11 and Taxation Code for the underground storage tank that is the
12 subject of the claim.

13 (C) (i) A claimant exempted pursuant to subparagraph (B)
14 shall obtain a level of financial responsibility twice as great as the
15 amount which the claimant is otherwise required to obtain
16 pursuant to subdivision (a) of Section 25299.32.

17 (ii) The board may waive the requirements of clause (i) if the
18 claimant can demonstrate that the conditions specified in clauses
19 (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the
20 causing of any contamination. That demonstration may be made
21 through a certification issued by the permitting agency based on
22 site and tank tests at the time of permit application or in any other
23 manner acceptable to the board.

24 (D) The board shall rank all claims resubmitted pursuant to
25 subparagraph (B) lower than all claims filed before January 1,
26 1994, within their respective priority classes specified in
27 subdivision (b) of Section 25299.52.

28 (4) The board has approved either the costs incurred for the
29 corrective action pursuant to subdivision (b) or the estimated costs
30 for corrective action pursuant to subdivision (c).

31 (5) The claimant has paid all fees, interest, and penalties
32 imposed pursuant to Article 5 (commencing with Section
33 29299.40) and Part 26 (commencing with Section 50101) of
34 Division 2 of the Revenue and Taxation Code for the underground
35 storage tank that is the subject of the claim.

36 (e) The board shall provide the claimant, whose cost estimate
37 has been approved, a letter of credit authorizing payment of the
38 costs from the fund.

1 (f) The claimant may submit a request for partial payment to
2 cover the costs of corrective action performed in stages, as
3 approved by the board.

4 (g) (1) Any claimant who submits a claim for payment to the
5 board shall submit multiple bids for prospective costs as
6 prescribed in regulations adopted by the board pursuant to Section
7 25299.77.

8 (2) Any claimant who submits a claim to the board for the
9 payment of professional engineering and geologic work shall
10 submit multiple proposals and fee estimates, as required by the
11 regulations adopted by the board pursuant to Section 25299.77.
12 The claimant's selection of the provider of these services is not
13 required to be based on the lowest estimated fee, if the fee estimate
14 conforms with the range of acceptable costs established by the
15 board.

16 (3) Any claimant who submits a claim for payment to the board
17 for remediation construction contracting work shall submit
18 multiple bids, as required in the regulations adopted by the board
19 pursuant to Section 25299.77.

20 (4) Paragraphs (1), (2), and (3) do not apply to a tank owned or
21 operated by a public agency if the prospective costs are for private
22 professional services within the meaning of Chapter 10
23 (commencing with Section 4525) of Division 5 of Title 1 of the
24 Government Code and those services are procured in accordance
25 with the requirements of that chapter.

26 (h) The board shall provide, upon the request of a claimant,
27 assistance to the claimant in the selection of contractors retained
28 by the claimant to conduct reimbursable work related to corrective
29 actions. The board shall develop a summary of expected costs for
30 common remedial actions. This summary of expected costs may
31 be used by claimants as a guide in the selection and supervision of
32 consultants and contractors.

33 (i) The board shall pay, within 60 days from the date of receipt
34 of an invoice of expenditures, all costs specified in the work plan
35 developed pursuant to Section ~~25299.37~~ 25296.10, and all costs
36 ~~which~~ *that* are otherwise necessary to comply with an order issued
37 by a local, state, or federal agency.

38 (j) (1) The board shall pay a claim of not more than three
39 thousand dollars (\$3,000) per occurrence for regulatory technical

1 assistance to an owner or operator who is otherwise eligible for
2 reimbursement under this chapter.

3 (2) For the purposes of this subdivision, regulatory technical
4 assistance is limited to assistance from a person, other than the
5 claimant, in the preparation and submission of a claim to the fund.
6 Regulatory technical assistance does not include assistance in
7 connection with proceedings under Section 25296.40,
8 25299.39.2, or 25299.56 or any action in court.

9 (k) (1) Notwithstanding any other provision of this section, the
10 board shall pay a claim for the costs of corrective action to a person
11 who owns property on which is located a release from a petroleum
12 underground storage tank ~~which~~ *that* has been the subject of a
13 completed corrective action and for which additional corrective
14 action is required because of additionally discovered
15 contamination from the previous release, only if the person who
16 carried out the earlier and completed corrective action was eligible
17 for, and applied for, reimbursement pursuant to subdivision (b),
18 and only to the extent that the amount of reimbursement for the
19 earlier corrective action did not exceed the amount of
20 reimbursement authorized by subdivision (a). Reimbursement to
21 a claimant on a reopened site shall occur when funds are available,
22 and reimbursement commitment shall be made ahead of any new
23 letters of commitment to be issued, as of the date of the reopening
24 of the claim, if funding has occurred on the original claim, in which
25 case funding shall occur at the time it would have occurred under
26 the original claim.

27 (2) For purposes of this subdivision, a corrective action is
28 completed when the local agency or regional board with
29 jurisdiction over the site or the board issues a closure letter
30 pursuant to subdivision ~~(h)~~ (g) of Section ~~25299.37~~ 25296.10.

31 *SEC. 42. Section 25299.58 of the Health and Safety Code is*
32 *amended to read:*

33 25299.58. (a) Except as provided in subdivision (d), if the
34 board makes the determination specified in subdivision (b), the
35 board may only reimburse those costs ~~which~~ *that* are related to the
36 compensation of third parties for bodily injury and property
37 damages and ~~which~~ *that* exceed the level of financial
38 responsibility required to be obtained pursuant to Section
39 25299.32, but not more than one million dollars (\$1,000,000) for
40 each occurrence.

1 (b) A claim may be paid if the board makes all of the following
2 findings:

3 (1) There has been an unauthorized release of petroleum into
4 the environment from an underground storage tank.

5 (2) The claimant has been ordered to pay a settlement or final
6 judgment for third-party bodily injury or property damage arising
7 from operating an underground storage tank.

8 (3) (A) Except as provided in subparagraph (B), the claimant
9 has complied with Section 25299.31 and the permit requirements
10 of Chapter 6.7 (commencing with Section 25280).

11 (B) All claimants who file their claim on or after January 1,
12 1994, and all claimants who filed their claim prior to that date but
13 are not eligible for a waiver of the permit requirement pursuant to
14 board regulations in effect on the date of the filing of the claim, and
15 who did not obtain or apply for any permit required by subdivision
16 (a) of Section 25284 by January 1, 1990, shall be subject to
17 subparagraph (A) regardless of the reason or reasons that the
18 permit was not obtained or applied for. However, on and after
19 January 1, 1994, the board may waive the provisions of
20 subparagraph (A) as a condition for payment from the fund if the
21 board finds all of the following:

22 (i) The claimant was unaware of the permit requirement prior
23 to January 1, 1990, and there was no intent to intentionally avoid
24 the permit requirement or the fees associated with the permit.

25 (ii) Prior to submittal of the application to the fund, the
26 claimant has complied with Section 25299.31 and has obtained
27 and paid for all permits currently required by this paragraph.

28 (iii) Prior to submittal of the application to the fund, the
29 claimant has paid all fees, interest, and penalties imposed pursuant
30 to Article 5 (commencing with Section 25299.40) and Part 26
31 (commencing with Section 50101) of Division 2 of the Revenue
32 and Taxation Code for the underground storage tank that is the
33 subject of the claim.

34 (C) (i) A claimant exempted pursuant to subparagraph (B)
35 shall obtain a level of financial responsibility in an amount twice
36 as great as the amount which the claimant is otherwise required to
37 obtain pursuant to subdivision (a) of Section 25299.32.

38 (ii) The board may waive the requirements of clause (i) if the
39 claimant can demonstrate that the conditions specified in clauses
40 (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to

1 any contamination having been caused. That demonstration may
2 be made through a certification issued by the permitting agency
3 based on site and tank tests at the time of permit application or in
4 any other manner as may be acceptable to the board.

5 (D) The board shall rank all claims resubmitted pursuant to
6 subparagraph (B) lower than all claims filed before January 1,
7 1994, within their respective priority classes specified in
8 subdivision (b) of Section 25299.52.

9 (4) The claimant is required to undertake or contract for
10 corrective action pursuant to Section ~~25299.37~~ 25296.10, or, as of
11 January 1, 1988, the claimant has initiated corrective action in
12 accordance with Division 7 (commencing with Section 13000) of
13 the Water Code or Chapter 6.7 (commencing with Section 25280).

14 (5) The claimant has paid all fees, interest, and penalties
15 imposed pursuant to Article 5 (commencing with Section
16 29299.40) and Part 26 (commencing with Section 50101) of
17 Division 2 of the Revenue and Taxation Code for the underground
18 storage tank that is the subject of the claim.

19 (c) A claimant may be reimbursed by the fund for
20 compensation of third parties for only the following:

21 (1) Medical expenses.

22 (2) Actual lost wages or business income.

23 (3) Actual expenses for remedial action to remedy the effects
24 of damage to the property of the third party caused by the
25 unauthorized release of petroleum from an underground storage
26 tank.

27 (4) The fair market value of the property rendered permanently
28 unsuitable for use by the unauthorized release of petroleum from
29 an underground storage tank.

30 (d) The board shall pay a claim submitted pursuant to
31 subdivision (e) of Section 25299.54 for the costs related to the
32 compensation of third parties for bodily injury and property
33 damages ~~which~~ that exceed the level of financial responsibility
34 required to be obtained pursuant to paragraph (2) of subdivision
35 (a) of Section 25299.32, but not more than one million dollars
36 (\$1,000,000) for each occurrence.

37 *SEC. 43. Section 25299.70 of the Health and Safety Code is*
38 *amended to read:*

39 25299.70. (a) Any costs incurred and payable from the fund
40 pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall

1 be recovered by the Attorney General, upon request of the board,
2 from the owner or operator of the underground storage tank which
3 released the petroleum and which is the subject of those costs or
4 from any other responsible party.

5 (b) The liability of an owner or operator shall be the full and
6 total costs specified in subdivision (a) if the owner or operator has
7 not complied with the requirements of Article 3 (commencing
8 with Section 25299.30) or ~~Article 4 (commencing with Section~~
9 ~~25299.36)~~ *has violated Section 25296.10 or any corrective action*
10 *order, directive, notification or approval order issued pursuant to*
11 *this chapter, Chapter 6.7 (commencing with Section 25280), or*
12 *Division 7 (commencing with Section 13000) of the Water Code.*
13 The liability of a responsible party who is not an owner or operator
14 shall be the full and total costs specified in subdivision (a).

15 (c) The amount of costs determined pursuant to this section
16 shall be recoverable in a civil action. This section does not deprive
17 a party of any defense the party may have.

18 (d) All money recovered by the Attorney General pursuant to
19 this section shall be deposited in the fund.

20 (e) The amount of the costs constitutes a lien on the affected
21 property upon service of a copy of the notice of lien on the owner
22 and upon the recordation of a notice of lien, ~~which if the notice~~
23 identifies the property on which the condition was abated, the
24 amount of the lien, and the owner of record of the property, in the
25 office of the county recorder of the county in which the property
26 is located. Upon recordation, the lien shall have the same force,
27 effect, and priority as a judgment lien, except that it attaches only
28 to the property posted and described in the notice of lien, and shall
29 continue for 10 years from the time of the recording of the notice,
30 unless sooner released or otherwise discharged. Not later than 45
31 days from the date of receipt of a notice of lien, the owner may
32 petition the court for an order releasing the property from the lien
33 or reducing the amount of the lien. In that court action, the
34 governmental agency that incurred the cleanup costs shall
35 establish that the costs were reasonable and necessary. The lien
36 may be foreclosed by an action brought by the board for a money
37 judgment.

38 *SEC. 44. Section 25404 of the Health and Safety Code is*
39 *amended to read:*

1 25404. (a) For purposes of this chapter, the following terms
2 shall have the following meaning:

3 (1) (A) “Certified Unified Program Agency” or “CUPA”
4 means the agency certified by the secretary to implement the
5 unified program specified in this chapter within a jurisdiction.

6 (B) “Participating Agency” or “PA” means a state or local
7 agency that has a written agreement with the CUPA pursuant to
8 subdivision (d) of Section 25404.3, and is approved by the
9 secretary, to implement or enforce one or more of the unified
10 program elements specified in subdivision (c), in accordance with
11 Sections 25404.1 and 25404.2.

12 (C) “Unified Program Agency” or “UPA” means the CUPA,
13 or its participating agencies to the extent each PA has been
14 designated by the CUPA, pursuant to a written agreement, to
15 implement or enforce a particular unified program element
16 specified in subdivision (c). The UPAs have the responsibility and
17 authority to implement and enforce the requirements listed in
18 subdivision (c), and the regulations adopted to implement the
19 requirements listed in subdivision (c), to the extent provided by
20 Chapter 6.5 (commencing with Section 25100), Chapter 6.67
21 (commencing with Section 25270), Chapter 6.7 (commencing
22 with Section 25280), Chapter 6.95 (commencing with Section
23 25500), and Sections 25404.1 and 25404.2. After a CUPA has
24 been certified by the secretary, the unified program agencies and
25 the state agencies carrying out responsibilities under this chapter
26 shall be the only agencies authorized to enforce the requirements
27 listed in subdivision (c) within the jurisdiction of the CUPA.

28 (2) “Department” means the Department of Toxic Substances
29 Control.

30 (3) “*Minor violation*” means the failure of a person to comply
31 with any requirement or condition of any applicable law,
32 regulation, permit, information request, order, variance, or other
33 requirement, whether procedural or substantive, of the unified
34 program that the UPA is authorized to implement or enforce
35 pursuant to this chapter, and that does not otherwise include any
36 of the following:

37 (A) A violation that results in injury to persons or property, or
38 that presents a significant threat to human health or the
39 environment.

40 (B) A willful or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) “Secretary” means the Secretary for Environmental Protection.

~~(4)–~~

(5) “Unified program facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c) of Section 25404.

~~(5)–~~

(6) “Unified program facility permit” means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be

1 developed in close consultation with the director, the Director of
2 the Office of Emergency Services, the State Fire Marshal, the
3 executive officers and chairpersons of the State Water Resources
4 Control Board and the California regional water quality control
5 boards, the local health officers, local fire services, and other
6 appropriate officers of interested local agencies, and affected
7 businesses and interested members of the public, including
8 environmental organizations.

9 (c) The unified program shall consolidate the administration of
10 the following requirements, and shall, to the maximum extent
11 feasible within statutory constraints, ensure the coordination and
12 consistency of any regulations adopted pursuant to those
13 requirements:

14 (1) (A) Except as provided in subparagraphs (B) and (C), the
15 requirements of Chapter 6.5 (commencing with Section 25100),
16 and the regulations adopted by the department pursuant thereto,
17 applicable to hazardous waste generators, and persons operating
18 pursuant to a permit-by-rule, conditional authorization, or
19 conditional exemption, pursuant to Chapter 6.5 (commencing
20 with Section 25100) or the regulations adopted by the department.

21 (B) The unified program shall not include the requirements of
22 paragraph (3) of subdivision (c) of Section 25200.3, the
23 requirements of Sections 25200.10 and 25200.14, and the
24 authority to issue an order under Sections 25187 and 25187.1, with
25 regard to those portions of a unified program facility that are
26 subject to one of the following:

27 (i) A corrective action order issued by the department pursuant
28 to Section 25187.

29 (ii) An order issued by the department pursuant to Chapter 6.8
30 (commencing with Section 25300) or Chapter 6.85 (commencing
31 with Section 25396).

32 (iii) A remedial action plan approved pursuant to Chapter 6.8
33 (commencing with Section 25300) or Chapter 6.85 (commencing
34 with Section 25396).

35 (iv) A cleanup and abatement order issued by a California
36 regional water quality control board pursuant to Section 13304 of
37 the Water Code, to the extent that the cleanup and abatement order
38 addresses the requirements of the applicable section or sections
39 listed in this subparagraph.

1 (v) Corrective action required under subsection (u) of Section
2 6924 of Title 42 of the United States Code or subsection (h) of
3 Section 6928 of Title 42 of the United States Code.

4 (vi) An environmental assessment pursuant to Section
5 25200.14 or a corrective action pursuant to Section 25200.10 or
6 paragraph (3) of subdivision (c) of Section 25200.3, that is being
7 overseen by the department.

8 (C) The unified program shall not include the requirements of
9 Chapter 6.5 (commencing with Section 25100), and the
10 regulations adopted by the department pursuant thereto,
11 applicable to persons operating transportable treatment units,
12 except that any required notice regarding transportable treatment
13 units shall also be provided to the CUPAs.

14 (2) The requirement of subdivision (c) of Section 25270.5 for
15 owners and operators of aboveground storage tanks to prepare a
16 spill prevention control and countermeasure plan.

17 (3) The requirements of Chapter 6.7 (commencing with
18 Section 25280) concerning underground storage tanks, except for
19 the responsibilities assigned to the State Water Resources Control
20 Board pursuant to Section 25297.1, and the requirements of any
21 underground storage tank ordinance adopted by a city or county.

22 (4) The requirements of Article 1 (commencing with Section
23 ~~25504~~ 25500) of Chapter 6.95 concerning hazardous material
24 release response plans and inventories.

25 (5) The requirements of Article 2 (commencing with Section
26 25531) of Chapter 6.95, concerning the accidental release
27 prevention program.

28 (6) The requirements of subdivisions (b) and (c) of Section
29 80.103 of the Uniform Fire Code, as adopted by the State Fire
30 Marshal pursuant to Section 13143.9 of the Health and Safety
31 Code, concerning hazardous material management plans and
32 inventories.

33 (d) To the maximum extent feasible within statutory
34 constraints, the secretary shall consolidate, coordinate, and make
35 consistent these requirements of the unified program with other
36 requirements imposed by other federal, state, regional, or local
37 agencies upon facilities regulated by the unified program.

38 (e) (1) The secretary shall establish standards applicable to
39 CUPAs, participating agencies, state agencies, and businesses
40 specifying the data to be collected and submitted by unified

1 program agencies in administering the programs listed in
2 subdivision (c) of ~~Section 25404~~. Those standards shall
3 incorporate any standard developed under Section 25503.3.

4 (2) The secretary shall establish an electronic geographic
5 information management system capable of receiving all data
6 collected by the unified program agencies pursuant to paragraph
7 (1). The secretary shall make all nonconfidential data available on
8 the Internet.

9 SEC. 45. Section 25404.1.1 is added to the Health and Safety
10 Code, to read:

11 25404.1.1. (a) If the unified program agency determines that
12 a person has committed, or is committing, a violation of any law,
13 regulation, permit, information request, order, variance, or other
14 requirement that the UPA is authorized to enforce or implement
15 pursuant to this chapter, the UPA may issue an administrative
16 enforcement order requiring that the violation be corrected and
17 imposing an administrative penalty, in accordance with the
18 following:

19 (1) Except as provided in paragraph (5), if the order is for a
20 violation of Chapter 6.5 (commencing with Section 25100), the
21 violator shall be subject to the applicable administrative penalties
22 provided by that chapter.

23 (2) If the order is for a violation of Chapter 6.7 (commencing
24 with Section 25280), the violator shall be subject to the applicable
25 civil penalties provided in subdivisions (a), (b), and (c) of Section
26 25299.

27 (3) If the order is for a violation of Article 1 (commencing with
28 Section 25500) of Chapter 6.95, the violator shall be subject to a
29 penalty that is consistent with the administrative penalties imposed
30 pursuant to Section 25514.5.

31 (4) If the order is for a violation of Article 2 (commencing with
32 Section 25531) of Chapter 6.95, the violator shall be subject to a
33 penalty that is consistent with the administrative penalties imposed
34 pursuant to Section 25540 or 25540.5.

35 (5) If the order is for a violation of Section 25270.5, the violator
36 shall be liable for a penalty of not more than five thousand dollars
37 (\$5,000) for each day on which the violation continues. If the
38 violator commits a second or subsequent violation, a penalty of not
39 more than ten thousand dollars (\$10,000) for each day on which
40 the violation continues may be imposed.

(b) In an order issued pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or cleanup conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority

1 granted to an agency by those provisions. When a hearing is
2 conducted by a UPA hearing officer pursuant to this paragraph, the
3 UPA shall issue a decision within 60 days after the hearing is
4 conducted.

5 (B) A UPA, or a person requesting a hearing on an order issued
6 by a UPA may select the hearing process specified in this
7 paragraph in a notice of defense filed pursuant to subdivision (d)
8 only if the UPA has, as of the date the order is issued pursuant to
9 subdivision (c), selected a designated hearing officer and
10 established a program for conducting a hearing in accordance with
11 this paragraph.

12 (f) The hearing decision issued pursuant to paragraph (2) of
13 subdivision (e) shall be effective and final upon issuance by the
14 UPA. A copy of the decision shall be served by personal service
15 or by certified mail upon the party served with the order, or their
16 representative, if any.

17 (g) Any provision of an order issued under this section, except
18 the imposition of an administrative penalty, shall take effect upon
19 issuance by the UPA if the UPA finds that the violation or
20 violations of law associated with that provision may pose an
21 imminent and substantial endangerment to the public health or
22 safety or the environment. A request for a hearing shall not stay the
23 effect of that provision of the order pending a hearing decision.
24 However, if the UPA determines that any or all provisions of the
25 order are so related that the public health or safety or the
26 environment can be protected only by immediate compliance with
27 the order as a whole, the order as a whole, except the imposition
28 of an administrative penalty, shall take effect upon issuance by the
29 UPA. A request for a hearing shall not stay the effect of the order
30 as a whole pending a hearing decision.

31 (h) A decision issued pursuant to paragraph (2) of subdivision
32 (e) may be reviewed by a court pursuant to Section 11523 of the
33 Government Code. In all proceedings pursuant to this section, the
34 court shall uphold the decision of the UPA if the decision is based
35 upon substantial evidence in the record as a whole. The filing of
36 a petition for writ of mandate shall not stay any action required
37 pursuant to this chapter or the accrual of any penalties assessed
38 pursuant to this chapter. This subdivision does not prohibit the
39 court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

SEC. 46. Section 25404.1.2 is added to the Health and Safety Code, to read:

25404.1.2. (a) (1) An authorized representative of the UPA, who in the course of conducting an inspection, detects a minor violation, shall take an enforcement action as to the minor violation only in accordance with this section.

(2) In any proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the determination made by the UPA regarding whether the violation is a minor violation.

(b) A notice to comply shall be the only means by which a UPA may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which case the UPA may take any enforcement action, including imposing a penalty, as authorized by this chapter.

(c) (1) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the

1 violation, the person cited or an authorized representative shall
2 sign the notice to comply, certifying that any violation has been
3 corrected, and return the notice to the UPA.

4 (2) A false certification that a violation has been corrected is
5 punishable as a misdemeanor.

6 (3) The effective date of the certification that any violation has
7 been corrected shall be the date that it is postmarked.

8 (d) If a notice to comply is issued, a single notice to comply
9 shall be issued for all minor violations noted during the inspection,
10 and the notice to comply shall list all of the minor violations and
11 the manner in which each of the minor violations may be brought
12 into compliance.

13 (e) If a person who receives a notice to comply pursuant to
14 subdivision (a) disagrees with one or more of the alleged violations
15 listed on the notice to comply, the person shall provide the UPA a
16 written notice of disagreement along with the returned signed
17 notice to comply. If the person disagrees with all of the alleged
18 violations, the written notice of disagreement shall be returned in
19 lieu of the signed certification of correction within 30 days of the
20 date of issuance of the notice to comply. If the issuing agency takes
21 administrative enforcement action on the basis of the disputed
22 violation, that action may be appealed in the same manner as any
23 other alleged violation under Section 25404.1.1.

24 (f) This section may not be construed as doing any of the
25 following:

26 (1) Preventing the reinspection of a facility to ensure
27 compliance with this chapter or to ensure that minor violations
28 cited in a notice to comply have been corrected and that the facility
29 is in compliance with those laws and regulations within the
30 jurisdiction of the UPA.

31 (2) Preventing the UPA from requiring a person to submit
32 necessary documentation needed to support the person's claim of
33 compliance pursuant to subdivision (c).

34 (3) Restricting the power of a city attorney, district attorney,
35 county counsel, or the Attorney General to bring, in the name of
36 the people of California, any criminal proceeding otherwise
37 authorized by law.

38 (4) Preventing the UPA from cooperating with, or participating
39 in, a proceeding specified in paragraph (3).

SEC. 47. Section 25514.5 of the Health and Safety Code is amended to read:

25514.5. (a) Notwithstanding Section 25514, any business ~~which~~ *that* violates this article is civilly liable to an administering agency for an administrative civil penalty, in an amount which shall be set by the governing body of the administering agency, but not greater than two thousand dollars (\$2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire or health or medical problem requiring toxicological, health, or medical consultation, the business shall also be assessed the full cost of the county, city, fire district, local EMS agency designated pursuant to Section 1797.200, or poison control center as defined by Section 1797.97, emergency response, as well as the cost of cleaning up and disposing of the hazardous materials, or acutely hazardous materials.

(b) Notwithstanding Section 25514, any business that knowingly violates this article after reasonable notice of the violation is civilly liable for an administrative penalty, in an amount which shall be set by the governing body of the administering agency, but not greater than five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) ~~An administering agency shall collect the penalty imposed by this section pursuant to Section 25514.6.~~

(d) ~~A penalty shall not be recoverable pursuant to this section and Section 25514 for the same violation.~~

(e) ~~The purpose of this section and Section 25514.6 is to provide local agencies with an alternative and effective means of enforcing public laws on the handling of hazardous materials and acutely hazardous materials.~~

(f) ~~In assessing the civil penalty, the administering agency shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator.~~

(g) ~~In all civil penalties collected pursuant to this section, the amount of two hundred dollars (\$200) shall first be deducted from the amount of the penalty. This two hundred dollars (\$200) shall be deposited in the Hazardous Materials Enforcement and Training Account, which shall be available for expenditure~~

~~pursuant to Title 13 (commencing with Section 14300) of Part 4 of the Penal Code.~~

~~(h) Notwithstanding Section 25515.2, after payment of the two hundred dollars (\$200) for the Hazardous Materials Enforcement and Training Account, all penalties collected pursuant to this section shall be apportioned in the following manner:~~

~~(1) Seventy-five percent to the administering agency which shall reimburse the county, city, fire district, local EMS agency, as designated pursuant to Section 1797.200 or the poison control center, as defined by Section 1797.97, for that portion of the penalty designated for the expenses of the county, city, fire district, local EMS agency or poison control center, respectively.~~

~~(2) Twenty-five percent to the principal agency which assisted the administering agency in its investigation. When an administrative agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this chapter, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.~~

~~SEC. 48. Section 25514.6 of the Health and Safety Code is repealed.~~

~~25514.6. (a) Notwithstanding Section 25516.1, the administering agency may issue a complaint to any person on whom civil liability may be imposed pursuant to Section 13009.6, 25514 or 25514.5. The complaint shall allege the acts or failures to act that constitute a basis for liability and the amount of the proposed civil liability. The complaint shall be served by personal service or certified mail and shall inform the party so served that a hearing shall be conducted within 60 days after the party has been served, unless the party waives the right to a hearing. If the party waives the right to a hearing, the administering agency shall issue an order setting liability in the amount proposed in the complaint unless the administering agency and the party have entered into a settlement agreement, in which case the administering agency shall issue an order setting liability in the amount specified in the settlement agreement. Where the party has waived the right to a hearing or where the administering agency and the party have entered into a settlement agreement, the order shall not be subject to review by any court or agency.~~

~~(b) After conducting any hearing required under this section, the administering agency shall, within 30 days after the case is~~

submitted, issue a decision, including an order setting the amount of civil penalty to be imposed.

~~(e) Orders setting civil liability issued under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. Copies of these orders shall be served by personal service or by certified mail upon the party served with the complaint and upon other persons who appeared at the hearing and requested a copy.~~

~~(d) Within 30 days after service of a copy of a decision issued by the administering agency, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of a decision or order of the hearing officer in any judicial proceedings brought to enforce the decision or order or for other remedies. Except as otherwise provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the administering agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.~~

~~(e) This section applies only to an administering agency which has adopted a written policy to carry out this section.~~

SEC. 49. Section 33459 of the Health and Safety Code is amended to read:

33459. For purposes of this article, the following terms shall have the following meaning:

(a) "Department" means the Department of Toxic Substances Control.

(b) "Director" means the Director of Toxic Substances Control.

(c) "Hazardous substance" means any hazardous substance as defined in subdivision ~~(g)~~ *(h)* of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this subdivision.

(d) “Local agency” means a single local agency that is one of the following:

(1) A local agency authorized pursuant to Section 25283 to implement Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with Section 25299.10) of, Division 20.

~~(2) A local health officer or designated local public officer authorized pursuant to Section 25187.7.~~

~~(3) A local officer who is authorized pursuant to Section 512 101087 to supervise a remedial action.~~

(e) “Qualified independent contractor” means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(f) “Release” means any release, as defined in Section 25320.

(g) “Remedy” or “remove” means any action to assess, evaluate, investigate, monitor, remove, correct, clean up, or abate a release of a hazardous substance or to develop plans for those actions. “Remedy” includes any action set forth in Section 25322 and “remove” includes any action set forth in Section 25323.

(h) “Responsible party” means any person described in subdivision (a) of Section 25323.5 of this code or *any person specified in* subdivision (a) of Section 13304 of the Water Code *who is subject to an order issued pursuant to that section.*

SEC. 50. Section 13285 of the Water Code is amended to read:

13285. (a) Any discharge from a storage tank, pipeline, or other container of methyl tertiary-butyl ether (MTBE), or of any pollutant that contains MTBE, that poses a threat to drinking water, or to groundwater or surface water that may reasonably be used for drinking water, or to coastal waters shall be cleaned up to a level consistent with ~~subdivision (b)~~ subdivisions (a) and (b) of Section ~~25299.37~~ 25296.10 of the Health and Safety Code.

(b) (1) No public water system, or its customers, shall be responsible for remediation or treatment costs associated with MTBE, or a product that contains MTBE, ~~provided, however, that~~ *the. However, the public water system shall be permitted may, as*

1 necessary to, incur MTBE remediation and treatment costs and to
2 include those costs in its customer rates and charges, *that are*
3 necessary to comply with drinking water standards or directives of
4 the State Department of Health Services or other lawful authority.
5 Any public water system that incurs MTBE remediation or
6 treatment costs may seek recovery of those costs from parties
7 responsible for the MTBE contamination, or from other available
8 alternative sources of funds.

9 (2) If the public water system has included the costs of MTBE
10 treatment and remediation in its customer rates and charges, and
11 subsequently recovers all, or a portion of, its MTBE treatment and
12 remediation costs from responsible parties or other available
13 alternative sources of funds, it shall make an adjustment to its
14 schedule of rates and charges to reflect the amount of funding
15 received from responsible parties or other available alternative
16 sources of funds for MTBE treatment or remediation.

17 (3) Paragraph (1) shall not prevent the imposition of liability on
18 any person for the discharge of MTBE if that liability is due to the
19 conduct or status of that person independently of whether the
20 person happens to be a customer of the public water system.

21 *SEC. 51. Section 13323 of the Water Code is amended to read:*

22 13323. (a) Any executive officer of a regional board may
23 issue a complaint to any person on whom administrative civil
24 liability may be imposed pursuant to this article. The complaint
25 shall allege the act or failure to act that constitutes a violation of
26 law, the provision of law authorizing civil liability to be imposed
27 pursuant to this article, and the proposed civil liability.

28 (b) The complaint shall be served by ~~personal notice or~~
29 certified mail *or in accordance with Article 3 (commencing with*
30 *Section 415.10 of, and Article 4 (commencing with Section*
31 *416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil*
32 *Procedure*, and shall inform the party so served that a hearing shall
33 be conducted within ~~60~~ 90 days after the party has been served.
34 The hearing shall be before a panel of the regional board,
35 consisting of three or more members of the regional board as it
36 may specify, or before the regional board. The person who has
37 been issued a complaint may waive the right to a hearing, ~~in which~~
38 ~~case the regional board shall not conduct a hearing.~~

39 (c) After any hearing, the panel shall report its proposed
40 decision and order to the regional board and shall, at the time it

1 reports its decision to the regional board, supply a copy to the party
2 served with the complaint, the party issuing the complaint, and any
3 other person requesting a copy. Members of the panel may sit as
4 members of the board in deciding the matter. The regional board,
5 after making an independent review of the record and taking such
6 additional evidence as may be necessary and could not reasonably
7 have been offered before the hearing panel, may adopt, with or
8 without revision, the proposed decision and order of the panel.

9 (d) *In proceedings under this article for imposition of*
10 *administrative civil liability by the state board, the executive*
11 *director of the state board shall issue the complaint and any*
12 *hearing shall be before the state board, or before a member of the*
13 *state board in accordance with Section 183.*

14 (e) Orders imposing administrative civil liability shall become
15 effective and final upon issuance thereof, and are not subject to
16 review by any court or agency except as provided by Sections
17 13320 and 13330. Payment shall be made not later than 30 days
18 from the date on which the order is issued. The time for payment
19 is extended during the period in which a person who is subject to
20 an order seeks review under Section 13320 or 13330. Copies of
21 these orders shall be served ~~by personal service or by registered~~
22 ~~mail~~ *certified mail or in accordance with Article 3 (commencing*
23 *with Section 415.10) of, and Article 4 (commencing with Section*
24 *416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil*
25 *Procedure upon the party served with the complaint and upon shall*
26 *be provided to other persons who appeared at the hearing and*
27 *requested a copy.*

28 SEC. 52. *Section 13365 of the Water Code is amended to read:*

29 13365. (a) (1) For purposes of this article, unless the context
30 otherwise requires, “agency” means the state board or a regional
31 board.

32 (2) The terms used in this article shall have the same meaning
33 as the definitions specified in the statutory authority under which
34 the agency takes any action subject to this article, except that,
35 notwithstanding Section 25317 of the Health and Safety Code, for
36 purposes of this article, “hazardous substance” includes a
37 hazardous substance specified in subdivision ~~(g)~~ *(h)* of Section
38 25281 of the Health and Safety Code.

39 (b) On or before July 1, 1997, the agency shall adopt a billing
40 system for the agency’s cost recovery of investigation, analysis,

1 planning, implementation, oversight, or other activity related to
2 the removal or remedial or corrective action of a release of a
3 hazardous substance that includes both of the following:

4 (1) Billing rates and overhead rates by employee job
5 classification.

6 (2) Standardized description of work tasks.

7 (c) Notwithstanding any other provision of law, after July 1,
8 1997, any charge imposed upon a responsible party by the agency,
9 to compensate the agency for some, or all, of its costs incurred in
10 connection with the agency's investigation, analysis, planning,
11 implementation, oversight, or other activity related to a removal
12 or remedial action or a corrective action to a release of a hazardous
13 substance, shall not be assessed or collected unless all of the
14 following requirements are met:

15 (1) Except as provided in subdivision (f), prior to commencing
16 the work or service for which the charge is assessed, and at least
17 annually thereafter if the work or service is continuing, the agency
18 shall provide all of the following information to the responsible
19 party:

20 (A) A detailed estimate of the work to be performed or services
21 to be provided, including a statement of the expected outcome of
22 that work, based upon data available to the agency at the time.

23 (B) The billing rates for all individuals and classes of
24 employees expected to engage in the work or service.

25 (C) An estimate of all expected charges to be billed to the
26 responsible party by the agency, including, but not limited to, any
27 overhead assessments that the agency may be authorized to levy.

28 (2) (A) Invoices shall be issued not less than semiannually
29 with appropriate incentives for prompt payment.

30 (B) Invoices shall be mailed to the correct person or persons for
31 the responsible party or parties.

32 (C) Invoices shall provide a daily detail of work performed and
33 time spent by each employee and contractor employee using the
34 billing and overhead rates and the standardized description of
35 work tasks adopted pursuant to subdivision (b).

36 (D) Invoices shall include the source and amount of all other
37 charges.

38 (E) Invoices shall be supplemented with statements of any
39 changes in rates and a justification for any such changes.

1 (F) Invoices shall be reviewed for accuracy and
2 appropriateness.

3 (3) Upon request and within a reasonable time, not to exceed
4 30 working days from the date of receipt of a request, the agency
5 shall provide the responsible party with copies of time records and
6 other materials supporting the invoice described in paragraph (2).
7 No fees or charges may be assessed for the preparation and
8 delivery of those copies pursuant to this section.

9 (4) The agency shall identify a party who is responsible for
10 resolving disputes regarding the charges subject to this section and
11 who is not responsible for, or performing, the work or service for
12 which the charges are assessed.

13 (d) The agency may adjust the scope of the work or service,
14 type of studies, or other tasks to be performed, based upon analyses
15 necessary to accommodate new information regarding the extent
16 of contamination of the site, and only after providing written
17 notice of the change to the responsible party containing the
18 information specified in paragraph (1) of subdivision (c).

19 (e) The agency may increase billing rates not more than once
20 each calendar year, to the extent authorized by law. Any increase
21 in billing rates or other charges, including, but not limited to,
22 overhead charges, shall operate prospectively only, and shall take
23 effect not sooner than 10 days from the date that written notice has
24 been provided to the responsible party.

25 (f) (1) Paragraph (1) of subdivision (c) shall not apply when a
26 situation exists that requires prompt action to protect human health
27 or safety or the environment.

28 (2) Paragraph (1) of subdivision (c) does not apply with respect
29 to those responsible parties who are not identified until after the
30 beginning of a removal or remedial action or corrective action to
31 a release of a hazardous substance.

32 *SEC. 53. Section 13391.5 of the Water Code is amended to*
33 *read:*

34 13391.5. The definitions in this section govern the
35 construction of this chapter.

36 (a) "Enclosed bays" means indentations along the coast which
37 enclose an area of oceanic water within distinct headlands or
38 harbor works. "Enclosed bays" include all bays where the
39 narrowest distance between the headlands or outermost harbor
40 works is less than 75 percent of the greatest dimension of the

enclosed portion of the bay. “Enclosed bays” include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake’s Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. For the purposes of identifying, characterizing, and ranking toxic hot spots pursuant to this chapter, Monterey Bay and Santa Monica Bay shall also be considered to be enclosed bays.

(b) “Estuaries” means waters, including coastal lagoons, located at the mouths of streams which serve as mixing zones for fresh and ocean waters. Coastal lagoons and mouths of streams which are temporarily separated from the ocean by sandbars shall be considered as estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and sea water. Estuarine waters include, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay Rivers.

(c) “Health risk assessment” means an analysis which evaluates and quantifies the potential human exposure to a pollutant that bioaccumulates or may bioaccumulate in edible fish, shellfish, or wildlife. “Health risk assessment” includes an analysis of both individual and population wide health risks associated with anticipated levels of human exposure, including potential synergistic effects of toxic pollutants and impacts on sensitive populations.

(d) “Sediment quality objective” means that level of a constituent in sediment which is established with an adequate margin of safety, for the reasonable protection of the beneficial uses of water or the prevention of nuisances.

(e) “Toxic hot spots” means locations in enclosed bays, estuaries, or any adjacent waters in the “contiguous zone” or the “ocean,” as defined in Section 502 of the Clean Water Act (33 U.S.C. Sec. 1362), the pollution or contamination of which affects the interests of the state, and where hazardous substances have accumulated in the water or sediment to levels which (1) may pose a substantial present or potential hazard to aquatic life, wildlife, fisheries, or human health, or (2) may adversely affect the beneficial uses of the bay, estuary, or ocean waters as defined in

1 water quality control plans, or (3) exceeds adopted water quality
2 or sediment quality objectives.

3 (f) “Hazardous substances” has the same meaning as defined
4 in subdivision ~~(f)~~-(h) of Section 25281 of the Health and Safety
5 Code.

6 *SEC. 54. No reimbursement is required by this act pursuant to*
7 *Section 6 of Article XIII B of the California Constitution because*
8 *the costs that may be incurred by a local agency or school district*
9 *will be incurred because this act creates a new crime or infraction,*
10 *eliminates a crime or infraction, or changes the penalty for a crime*
11 *or infraction, within the meaning of Section 17556 of the*
12 *Government Code, or changes the definition of a crime within the*
13 *meaning of Section 6 of Article XIII B of the California*
14 *Constitution, or because a local agency or school district has the*
15 *authority to levy service charges, fees, or assessments sufficient to*
16 *pay for the program or level of service mandated by this act, within*
17 *the meaning of Section 17556 of the Government Code.*

